Mapping Citizenship in India

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Contents

Abbreviations

AAGSP	All Assam Gana Sangram Parishad
AAPSU	All Arunachal Pradesh Students' Union
AASU	All Assam Students' Union
AGP	Asom Gana Parishad
AUDF	Assam United Democratic Front
BJP	Bharatiya Janata Party
BMC	Bombay Municipal Corporation
CEC	Chief Election Commissioner
CCRC	Committee for the Citizenship Rights of Chakmas
DC	District Collector
ECOSOC	Economic and Social Council
IB	Intelligence Bureau
IC	Indian Citizenship
IFS	Indian Foreign Service
IMDT	Illegal Migrants Determination by Tribunal Act
MEA	Ministry of External Affairs
MHA	Ministry of Home Affairs
MLA	Member of Legislative Assembly
MP	Member of Parliament
NDA	National Democratic Alliance
NEFA	North East Frontier Agency
NHRC	National Human Rights Commission
NPR	National Population Register
OBC	Other Backward Classes
OCI	Overseas Citizen of India

PIL	Public Interest Litigation
PIO	Person of Indian Origin
POTA	Prevention of Terrorism Act
PUCL	People's Union for Civil Liberties
RHLCID	Report of the High Level Committee on India Diaspora
RMM	Rashtriya Mukti Morcha
SC	Scheduled Caste
SEZ	Special Economic Zone
ST	Scheduled Tribe
ULFA	United Liberation Front of Assam
UN	United Nations
UP	Uttar Pradesh
UPA	United Progressive Alliance

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Introduction

Enframing the Citizen in Contemporary Times

Over the past several years, citizenship has endured resolutely as a central concern in the understanding of social change. This abiding interest in citizenship among social scientists is remarkable considering that in its origin and growth, citizenship was, and continues to be, associated with 'dominant' concepts like state, nation-state, democracy, rights, and equality, which have for long determined imaginaries of the form and substance of social life and political community. The last two decades, which have witnessed an unprecedented interest in citizenship, are largely seen as the period of its 'return' and 'resurgence', following a period of waning of interest in the concept.[1] A significant body of scholarship on citizenship has accumulated over this period, carving out its conceptual autonomy and also underscoring its specificity as a concept which, through a clustering with other cognate concepts,[2] produces polyrhythmous understandings of social reality and possibilities of social change.

If one examines the diverse and continually accumulating literature on citizenship in the period of its resurgence, one is struck by the insistence in all these writings that citizenship needs to be redefined in what are claimed to be the changed circumstances of its return. The present age of citizenship's return, these writings argue, is different from the earlier ages in which there had been 'heightened

[1] In the article, 'Return of the Citizen: A Survey of Recent Work on Citizenship Theory', Will Kymlicka and Wayne Norman claim that there has been a return of interest in citizenship in social and political theory, so much so that it had become the 'buzz word' among thinkers on all points of the political spectrum (Kymlicka and Norman 1994: 352).

[2] A 'cluster concept' (following Wittgenstein) does not have any immutable central core and constitutes a meeting ground for several notions.

consciousness of citizenship'.[3] While the earlier periods of heightened consciousness around citizenship were associated with specific states, the consciousness about citizenship in the contemporary period, the argument goes, is not confined to a single state but is *virtually global in its extent* (ibid.).

The globality of citizenship is seen as having two aspects. One of these, emerging from normative cosmopolitanism, sees it as an enduring cosmopolitan consciousness, superior to nationalism. Citizenship's globality would then be an encompassing condition of belonging in a transcendental solidarity. Unfettered by national ties, this condition is of a higher democratic order, projecting humanity beyond the confines of territorial boundaries.[4] The second aspect of globality of citizenship consists in the belief that globalization has created the material conditions in which cosmopolitan existence may indeed be possible.[5] The material networks of globalization, theorists argue, have constituted a world that is interconnected enough to generate political institutions and non-governmental organizations that have a global reach in their regulatory functions as well as global forms of mass-based political consciousness or popular feelings of belonging to a shared world (Cheah 2006). Both normative cosmopolitanism and globalization, it has been argued by an influential strand of scholarship, have rendered notions of bounded political communities and national sovereignty, as well as the

[3] The late 1980s onwards, it is argued by citizenship theorists, has been a period of resurgence for citizenship, which is different from other periods. While the earlier periods were associated with specific states (fifth to fourth century BC Athens, first century BC to first century AD Rome, late medieval Florence, late-eighteenth-century America and France) or with anti-colonial struggles in different countries, in the conditions specific to the twentieth century, the consciousness about citizenship is global in its extent. For a discussion of these arguments see Heater (1999), Faulks (2000), and Roy (2005).

[4] Philosophically, the Kantian idea of an inherent universality of 'humanity' was seen as corresponding to an idea of expansive globality as its sphere of actualization. Conversely then, globality may be seen as imbued with and coterminous with the idea of humanity.

[5] The 'material' conditions of globalization are characterized by the cataclysmic changes in technological and economic expansion, including the globalization of economy, transnational production sites and labour market, a global spread of speculative finance capital, rise of regional and supranational political formations, unprecedented scale of transnational movement of people migrating for work, and a phenomenal increase in the flow of information facilitating worldwide circulation of culture, images, and data.

identity between national culture and political membership, redundant. Bryan Turner (1986), Ursula Vogel and Michael Moran (1991), Jürgen Habermas (1992), and Yasemin Soysal (1994), for example, have suggested that there exists a tension between traditional forms of social and political membership and the interdependence that contemporary world developments have brought about. In this context, they argue, citizenship has to part company with the nation-state and accompanying notions of nation-state sovereignty. The restrictive rights of citizenship confined within the boundaries of the nation-state, accordingly, have to give way to ideas of membership in the world community and the universal human rights that this community upholds.

However, the association of the changed content and form of citizenship with a supposedly more humane 'world order', where respect for human dignity goes beyond the confines of national boundaries, is counterbalanced by a simultaneous lament of a 'crisis' in the old forms of citizenship. In this chant of crisis, citizenship gets reaffirmed and reinscribed in exclusionist terms, emerging yet again as the bastion on which the nation-state asserts its sovereignty and fortifies itself against the 'hordes of starving people' (Ferrajoli 1996: 151–4). The 'universalism' of human rights is put to test by the pressures placed on 'our' borders by 'hordes of starving people' and the assertion of their 'difference' by minority groups, thus putting citizenship into 'crisis'. This tension resonates in immigration laws across the world and corresponding shifts in the ideological basis of citizenship, emphasizing 'descent' and 'blood ties' in consideration for citizenship while devaluing work and residence status.

As an idea inspiring struggle and as an 'instituted process' whereby in specific historical settings citizenship rights are engendered through the interaction of 'social practices' with 'institutional ideals and rules of legal power' (Somers 1993: 589, 610–11), citizenship has remained an enduring link between political thought and practice of antiquity and the present times. Often citizenship is put forth as a momentum concept (Hoffman 1997: 2004), foregrounding its integrative and universalizing aspects. The idea that citizenship is inherently egalitarian—having the capacity to extend and deepen itself by bringing into its fold increasing numbers of people and changing its content to meet emergent needs—is emphasized by those who see citizenship as having an inherent impetus towards universality (Marshall 1950; Turner 1986). However, the fact that citizenship is deeply contested and is experienced and unfolds in specific social fields amidst heterogeneous and often contesting political imaginaries, assumptions, and practices, has also become influential in

thinking about citizenship. Thus, alongside articulations of 'free and equal membership' (Marshall 1950; Marshall and Bottomore 1992), the idea that citizenship is 'ultimately relational' (Faulks 2000; Hoffman 2004),[6] 'deeply dialogical' (Yuval-Davis 1997; Werbner and Yuval-Davis [1999] 2005),[7] and 'hierarchized' (Baxi 2002)[8] has also become prevalent. Increasingly also, citizenship is no longer seen as embodying a politics of indifference, and has come to constitute a condition replete with possibilities and promises for radical change (Chatterjee 2004;

[6] Central to a relational as distinct from an atomistic view of citizenship is a celebration of difference, and the notion of a meaningful relationship which can occur only when people in a relationship can differ from one another and respect their differences in a way that they can manifest the capacity to 'change places' and understand what it means to be 'the other'. The value of relational citizenship would lie in its ability to reinvent the state so as to move beyond exclusionary boundaries which are maintained by force and coercion (Hoffman 2004: 29–31).

[7] In perhaps the most expansive framework of citizenship and feminist politics, Pnina Werbner and Nira Yuval-Davis place the idea of 'feminist transversal practice' at the core of the 'transnational resistance' to globalization. The idea of the *transverse* is significant, in as much as it shows both the *direction* and the aspired *scale* of resistance to transnational power. The idea of feminist politics as transversal practice enables the conceptualization of citizenship as a set of intersecting relationships which are continually evolving and deeply dialogical. The fact that transversal relationships evolve in the course of resistance in specific contexts of domination evinces an idea of relationships that are not stagnant. On the other hand, the recognition that these relationships are historically inflected, and emerge within specific cultural and social contexts, makes transversal resistance sensitive to ideas of similarity and difference. The negotiation of these differences and specificities of contexts may generate, at different times and places, quite different sets of practices, institutional arrangements, modes of social interaction, and future orientations (Werbner and Yuval-Davis [1999] 2005). Thus, feminist transversal politics is seen as paving the way out from an exclusivist identity politics and forces of globalization. Transversal politics differs from 'identity' politics in the sense that it rejects the communitarian claim that a social positioning can automatically be conflated with personal values. It is not only premised on dialogues across communities, it also proposes that social differences in positionings must be grasped in all their complex intersections, rather than in terms of a single prioritized identity. Such a politics aims to use dialogue to reach closer to a shared reality (Yuval-Davis 1997).

[8] The hierarchy of citizenship has been identified as follows by Upendra Baxi: super-citizens (beyond the law); negotiating citizens (typically upper middle class who, through their capabilities to negotiate the law, often remain immune from the law, but have the power to represent law enforcement as regime persecution); subject-citizen (the vast majority of the impoverished Indian to whom the law applies relentlessly and for whom the presumption of innocence stands inverted); insurgent citizens (often encountered or exposed to vicious torture, whose bodies construct the expedient truths of security of the state); gendered citizens (women, lesbi-gay, and transgender people, recipients, and often receptacles, of inhuman societal and state violence and discrimination); and PAPs-citizens (the project affected peoples who remain subjects of state practices of lawless development).

Menon 2004; Nigam 2006; Nandy 2007; Holston 2008; Mohanty 2009). Correspondingly, the social and political field that citizenship has come to traverse is no longer benign and impersonal or immobilized and stagnant in legal trappings. Rather, it signifies a continually reconfiguring field of contest. More often than not, the contest is over definitions and the corresponding limits they put on who belongs, how, and on what terms.

Significantly, citizenship both in its classical formulation and as it emerged with modernity, and has unfolded thereon, has remained concerned with the principles of organization of social life. While these concerns have varied between the transcendence of the political community and political life, a growing recognition of pluralities, and diversities of social existence and allegiances, this work will focus on the ways in which they constitute the boundaries of citizenship. Thus, if the citizen in the classical tradition embodied the optimum condition of freedom, the 'modern' citizen was constituted legally and politically as an autonomous and sovereign self.[9] Yet, even as citizenship was laying down the guiding principles for a political community, it was also spelling out its association with privileges (Shafir 1998). In a manifestation of the way in which the 'lesson of otherness', as Balibar calls it, is inextricably and inherently inscribed into the code of citizenship in modern nation-states, citizenship produces the 'constitutive outsiders' (Mouffe 2000: 12–13), 'as an indispensable element of its own identity, its virtuality, its power' (Balibar 2003: 38–9, cited in Mezzadra 2006: 32). Denoting differential or layered membership in the political community, 'otherness' is not a relationship of 'simple opposition' which manifests itself in exclusion. Rather, the relationship is one of forclusion, where the outsider is present

[9] Etienne Balibar has pointed out two significant aspects of citizenship's relationship with sovereignity (i) its association with politics and the state and the principle of public sovereignty and (ii) its association with the exercise of the principle of individual 'capacity' to participate in political decisions (Balibar 1988: 723–4).

discursively and constitutively in delineations of citizenship (Mezzadra 2006: 32–3).[10] As a constant referent, the outsider is indispensable for the identification of the citizen; ironically, like the citizen's 'virtual' image, the outsider is inextricably tied to the 'objective' citizen without, however, being able to reproduce herself as one. Moreover, forclusion is reproduced and reinscribed continually through legal and judicial pronouncement, so much so that the 'other' constantly cohabits the citizen's space in a relationship of incongruity.

In this work, I hope to show how the relationship of forclusion makes itself manifest through the intertwined processes of *encompassment* and *closure*. Encompassment, according to Werbner and Yuval-Davis, works to resolve the contradiction between abstract universalism and difference, posed by a critical theory of citizenship (Werbner and Yuval-Davis 2005: 10). While abstract universalism is an encompassing and transcendental value, in order to be democratic, the universal has to unfold and install itself among differentially located individuals and groups and within a set of dialectical relationships and processes that recognize difference rather than deny or eliminate them. The 'logic of encompassment' expressed by Werbner and Yuval-Davis, I argue, is based on two assumptions—first, the moments in which a dialectical relationship manifests itself are also potential moments of liberatory change and second, while universalism continues to be the overarching framework within which difference unfolds, it is through the dialectic that contradictions in society are manifested and resolved. Following the logic of encompassment, difference produces the dialectic within the universal and also generates a movement towards further universalization, so that universalism and difference come across as co-equal values existing in a dialectical relationship. While the logic of encompassment may, therefore, be envisaged as a progressive opening up of democratic spaces, a paradox inheres in citizenship, which is manifest in the closures which come into play immediately when citizenship unfolds in practice. Closure, therefore, is a simultaneous differential experience of citizenship which accompanies each liberating moment of encompassment. Processes of closure, I argue, create a breach in the differentiated-universalism envisaged by the logic of encompassment. While encompassment, inflected by the propelling force of dialectic, assumes a relationship within which difference may be recognized, closure constitutes a process of denial.

The legal-constitutional language of citizenship in India and the manner in which it has unfolded in practice shows that citizenship oscillates ambivalently between encompassment and closure. Yet, it is also these ambivalences which provide the 'disturbed zones of citizenship' (Chatterjee 1998), which have the potential to propel it out of legal trappings towards realization as a momentum concept. In this work, I hope to identify the interlocking strands of encompassment and closure, by mapping the amendments that have taken place in the citizenship laws in India. Sieving out the category of the migrant in particular, I would venture to show how different figurations of the migrant have been integral to these amendments, and the manner in which they demonstrate shifts in the ideological basis and institutional practices of citizenship in India.

THE PARADOX OF MOMENTUM AND HIERARCHY

As mentioned at the outset, the modern notion of citizenship is often presented as a momentum concept, foregrounding its egalitarian, integrative, and universalizing aspects. Momentum concepts as opposed to static concepts are those which are 'infinitely progressive and egalitarian: they have no stopping point and cannot be realised' (Hoffman 2004: 12). Hoffman distinguishes momentum concepts from static concepts like state, patriarchy, and violence, which are repressively hierarchical and oppressive. Momentum concepts like citizenship, freedom, and autonomy, on the other hand, 'have a historical dynamic, which must be constantly built upon and transcended' (ibid.). The expression 'momentum concept', used for citizenship by Hoffman in 1997, refers to the momentum created by citizenship's internal logic, which demands that its benefits necessarily become progressively universal and egalitarian (Hoffman cited in Faulks 2000: 3; Hoffman 2004).[11] Hoffman identifies three ways in which citizenship may be seen as a momentum concept. First, the struggle for citizenship can be developed even by those who seek only limited steps forward without being aware of a more wider-ranging

[10] In postcolonial theory, the relationship between the self and the other is not one of an opposition or exclusion. As the Lacanian term 'forclusion' used by Spivak and other postcolonial theorists conveys, it is a relationship of constant comparison so that the other is constantly implied in the identity and unity of the self.

[11] Hoffman used the expression, 'momentum concept' in a paper entitled 'Citizenship and the State', presented at a conference on Citizenship for the Twenty-first Century at the University of Central Lancashire in October 1997.

agenda; second, citizenship involves a process of change, which is both revolutionary and evolutionary; third, citizenship is an ongoing struggle with no stopping point (Hoffman 2004: 12–13). This attribute of citizenship has also been identified by Bryan Turner in his description of citizenship as 'a series of expanding circles which are pushed forward by the momentum of conflict and struggle' (Turner 1986: xii). The struggle aims ultimately at expanding the circles or whorls of integration into citizenship, which in turn may also be seen as a condition that is continually evolving and changing, or alternatively, at dismantling structures that spell inequality. Like 'democracy', also a momentum concept, which while flagged as a desirable value, is often in practice bridled into 'reasonable limits' for its 'dangerous' potential, citizenship's momentum towards equality is also feared. For Hoffman, therefore, it is not just the ends of 'inclusive citizenship', but rather the continuing process of 'achieving' the 'ad infinitum' which underscores its significance (Hoffman 2004: 13).

The idea of citizenship as a condition spelling continuous propulsion towards equality and universality was espoused initially in T.H. Marshall's lecture on 'Citizenship and Social Class' delivered in Cambridge in February 1949. In his lecture, Marshall outlined a theory of citizenship which was to provide the reference-frame for most works on citizenship which followed. Starting from the initial proposition on citizenship as 'free and equal membership in the political community',[12] Marshall identifies three constituent elements of citizenship, namely, civil, political, and social, and traces their development in correspondence with specific state structures/institutions in a process of '*continuous progress* for some two hundred and fifty years' (Marshall 1950: 10 [emphasis added]). The 'principle of equality' is an abiding feature of citizenship through all its constituent elements, that is, the civil element composed of 'rights necessary for individual freedom', the political element consisting in the right to participate in the exercise of political power, and the social element consisting of 'the whole range from the right to

[12] The precise expression used by Marshall is as follows: 'Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed. There is no universal principle that determines what those rights and duties shall be, but societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed' (Marshall 1950: 28–9).

a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in society' (ibid.: 10–11).

Thus, for Marshall, although citizenship, even by the end of the nineteenth century, had done little to reduce social inequality substantially,

> it had helped to guide progress into the path which led directly to the egalitarian politics of the twentieth century. It also had an integrating effect, or at least, was an important ingredient in an integrating process. Prefeudal societies [were] bound together by a sentiment and recruited by [the] fiction...[of] kinship, or the fiction of common descent. Citizenship requires a bond of a different kind, a direct sense of community membership based on loyalty to a civilization, which is a common possession. It is a loyalty of free men endowed with rights and protected by a common law. Its growth is stimulated both by the struggle to win these rights and by enjoyment of them when they are won.(ibid. 40–1)

Marshall's framework may be seen as encapsulating the two promises which modern citizenship claims to make: (1) a 'horizontal *camaraderie*' or equality as opposed to hierarchical inequalities among members of the political community, and (2) the promise of 'integration', whereby the expanding circle of citizenship gradually brings into its fold various excluded and marginalized sections of the population. This membership is also, then, the expression of an identity, of a sense of belonging to the political community, which is the nation-state, and assures a share in a common (national) culture and social heritage.

What is significant about Marshall's theory is not just his commonly accepted definition of citizenship, and its constituent elements, but also the insight he presents into the contradictory impulses which are manifested in its growth alongside capitalism in a precarious relationship of contest and collusion. Marshall asks,

> Is it...true that basic equality when it is enriched in substance and embodied in the formal rights of citizenship, is consistent with the inequalities of social class? I shall suggest that our society today assumes that the two are still compatible, so much so that citizenship has itself become, in certain respects, the architect of legitimate social inequality. (ibid.: 9)

The puzzle Marshall poses to the reader pertains to the ambivalent relationship between citizenship and social class and the implications this has on the principle of equality, which is integral to citizenship. Indeed, a fundamental question for Marshall is whether horizontal social equality, which is the characteristic of 'modern' citizenship as distinct from the feudal hierarchies of status, is consistent with inequalities of social class,

which is the feature of capitalist societies. It is evident to Marshall that with citizenship 'class-abatement', which 'was not an attack on the class system', becomes 'a desirable aim to be pursued' (ibid.: 32–3). Thus, rather than a dismantling of inequalities of class, class abatement aims 'often quite consciously at making the class system less vulnerable to attack by alleviating its less defensible consequences' (ibid.). Yet, the 'modern drive towards social equality', he argues, is at its peak 'in the latest phase of evolution of citizenship', so much so that '. . . in the twentieth century citizenship and the capitalist class system have been at war . . . it is quite clear that the former has imposed modifications on the latter. . . . Social rights in their modern form imply an invasion of contract by status, the subordination of market price to social justice, the replacement of free bargain by the declaration of rights ...' (ibid.: 68).

Seen in the above framework, citizenship may be envisaged as holding out the promise of inclusion to all persons irrespective of their caste, class, gender, race, or religion—in other words, generalizing citizenship across social structure. Equality and universality as they exist in the dominant liberal framework are, however, based on an acceptance of the freedom of competitive market forces and the subsequent inequality of social class. The promise of inclusion merely involves the assurance that all persons are equal before the law and, therefore, no person or group is legally privileged, and that the state shall not discriminate among persons on the basis of any of these differences. Citizenship's promise of equality may then be seen as premised on a *masking* of ascriptive, structural, and historically emergent inequalities and differences (of culture, caste, gender, ethnicity, among others) rather than dismantling them. The expressions 'unmarked', 'abstract', 'floating', 'unencumbered', and 'un-embedded' citizen which are used alternatively to denote the citizen as envisaged in the liberal tradition, refers to this process of masking. Thus, citizens are seen as equal bearers of rights and entitlements, and the condition in which they exercise rights equally is achieved by making the conditions of difference irrelevant for the exercise of their rights.

On the other hand, citizenship's promise of equality actually remains elusive and fettered, as societies are always marked by hierarchies of class, caste, sex, race, and religion, rather than equality of status and belonging. In practice, citizenship has always unfolded in a way that makes it inherently and implicitly marked. The provision of citizenship through masking disregards the differential ability of persons across

classes to exercise the rights or legal capacities which constitute citizenship. Moreover, the privilege of dissociation from one's ascriptive/constitutive identity is not available equally to all. Those disadvantaged by class, caste, race, gender, etc. will continue to be marked to their disadvantage in the community of citizens in which they have legal membership and partnership. The disability is a double one because in these circumstances, citizenship rights that are only formal cannot influence the conditions which render the possession of citizenship ineffective, if not worthless. Thus, citizenship may ultimately unfold as an exclusive category in the sense that it may limit membership through specific rules identifying members and outsiders. Moreover, even among 'members' or those who legally 'belong', socio-economic and cultural contexts would ultimately determine the terms of inclusion so that even as citizenship makes claims to being a horizontal camaraderie of equal members, in actual practice, it embodies a range of graded and differential categories and corresponding lived experiences of citizenship.

Citizenship is, moreover, inextricably tied with the processes of state formation. It is intertwined with governmentality which is directed towards the vitalization and affirmation of state power, and unfolds as an exercise of state sovereignty, providing legitimacy to its actions, and its claims to representation. Changes in citizenship practices are imbricated in the politics of place-making, deep cartographic anxieties associated with the delineation of the national-space, the assertion of specific ethno-spaces, and the exclusive membership that modern states prescribe. Thus, alongside the citizens, the state produces the 'constitutive outsiders' such as the 'inadequate or deficient citizens',[13] namely, women, 'lunatics', the 'vagrant', and 'the colonized'; the 'indifferent outsiders', namely, 'aliens' and 'foreigners';[14] and the 'disruptive' and subsequently

[13] The idea that the colonized subjects did not have the 'capacity' to be autonomous political subjects was central to the colonial project and its practices of rule, justifying the deferral or postponement of self-rule and democracy in the colonies (Chatterjee 1994a: 82). For Dipesh Chakravarty, deferral or 'not yet' was internal to the very logic of capital (Chakravarty 1993, 2000: 65).

[14] Research into the extension of political rights in the late nineteenth and twentieth centuries has shown that women, slaves, workers, and the colonized were considered incompetent and lacking the rational capacity to exercise the rights of citizenship. Debates surrounding the 1864 Reforms Act, which gave political rights to 35–40 per cent of adult male workers in Britain, concurred that the inclusion of women would subvert women's 'natural' roles. Through much of the nineteenth century, the debate over franchise for women and the working class

'dangerous' category of 'illegal aliens/migrants'.[15] While the first two categories indicate differential or layered inclusion, the last, that is, the category of the 'illegal alien/migrant', perhaps more effectively than any other, signifies the borders demarcating citizenship. It is not surprising, therefore, that authorization and control of entry and movement of aliens—freedom of movement and residence being a right reserved for 'legitimate' citizens—is construed as a significant manifestation of state sovereignty. Conversely, identification of transgressors of this preserve of citizens, and subsequent attribution of illegality, is construed as imperative for sovereign states.

In an interesting formulation, Gianfranco Poggi looks at the relationship between states and citizens from what he calls 'the vantage point of the state' and asks the question: what do citizens look like when viewed from this vantage point? Poggi suggests that even as the modern state is expected to have 'learnt' through political modernization to look at individuals who live in the state as citizens, in actual practice it continues to treat them as subjects. The transition from subject-ness, he argues, is never complete or final, and continues, because the state remains essentially a system of rules and a set of arrangements and practices, whereby one part of a divided society exercises domination over the other part, where rule is exercised *over* a population so that the key political relationship remains one between those who command and those who obey, and the great majority of citizens in their routine existence see the state as something different from them, and lying above them (Poggi 2003).

Thus, an inherent paradox lies within citizenship between its simultaneous unfolding as a momentum concept with a liberatory promise and citzenship's hierachical aspects which emerge from state practices of citizenship as well as the socio-economic contexts in which

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in Britain saw the 'vote' being defined increasingly in national, imperialist, class, and gender terms. Opponents of universal franchise compared the working class to colonial 'natives', both requiring firm, unflinching, and unsentimental control. The constant reiteration of this authority was important for continued subjection of these sections of the population by the white, propertied male (Hall 1992: 285).

[15] While discussing global constitutionalism, Ferrajoli suggests that human rights were proclaimed universal 'when the distinction between man and citizen did not create any problem, it being neither likely nor forseeable that the men and women of the third world would arrive in Europe and these statements of principle might be taken literally' (Ferrajoli 1996: 151–4).

these practices are embedded and unfold. The dominant framework of citizenship as an aspect of western modernity, as well as its relationship in its origins and synchronous development with the nation-state, capitalism, and liberalism, continue to shape its content and trajectory in present times. While the emergence of the 'masked' citizen was emancipatory in so far as it signified a process of transition from subject-hood to a citizenship unmarked by status, by disregarding/masking structural conditions which determine experiences of citizenship, it was also constitutive of inequalities. It is for this reason that any rethinking of citizenship cannot be limited to mere inclusion, but also has to explore ways by which a radical notion of citizenship praxis may be woven into the conceptual framework of democratic citizenship. Citizenship, however, is simultaneously emancipatory and dynamic, so that at different moments in history, 'becoming a citizen' has involved either an extension of the status to more persons or a liberatory dismantling of hitherto existing structures of oppression to be replaced by more egalitarian and inclusive structures.

Apart from the paradoxical nature of citizenship as manifested in its liberatory potential as a momentum concept and the limits that immediately come into play when it unfolds in practice, the constituent elements of citizenship have been uncertain and often contradictory, making it difficult to outline a precise notion of citizenship. There would be divergent responses, for example, to questions pertaining to whether rights or duties are the defining elements of citizenship, or whether the arena of politics or state activities is its rightful domain as opposed to the spheres of culture, economy, and society. Again, there would also be no consensus on whether citizenship is only a status or a measure of activity, or what is of primary significance for citizenship—the autonomy of the individual or the community and the societal contexts which shape the needs of the individual, and even on questions pertaining to the legitimate unit of citizen membership, namely, the nation-state or global civil society. In order to understand why these contradictions coexist in the conceptual framework of citizenship, it is important to see them in terms of historically emergent diachronous strands. It is important, moreover, to explore these various strands in their specific historical contexts, keeping in mind, however, that at each historical moment the earlier strands coexist, keeping alive the tensions and uncertainties over the form and content of citizenship.

As discussed earlier, citizenship has contending elements which make it simultaneously liberatory and confining. Yet, it is effectively the

presence of these contending and dialectical impulses which generate the 'disturbed zones within citizenship' (Chatterjee 1998) making it a notion spelling radical political transformation in some cases and expansion of conditions of equality and freedom in others. An exploration of the disturbed zone shows not simply a contest between the liberatory and confining aspects of citizenship, that is, the momentum and hierarchical aspects, as it has so far been identified. It also reveals a conflict between contending practices of citizenship—the hegemonic state practices of rule, in particular, processes of governmentality—which, through enumeration and surveillance of 'population', contains people into 'bound serialities' (Chatterjee 2004)[16] and differential inclusion in the political community. The constraints of these bounded serialities are released by countervailing struggles, through 'people's practices of citizenship'—rupturing hegemonies, rethinking and rearticulating citizenship.

THE DISTURBED ZONE OF CITIZENSHIP

The present times have seen a heightened consciousness around citizenship practice, not only because a range of struggles have made visible the contradiction between the momentum and hierarchical aspects of citizenship, but also because the issues that have subsequently emerged have woven areas of tension around the nation-state as a unit of citizenship-membership and the individual as the citizen-member. Contemporary debates around the nation-state and its relationship with citizen-members have taken two forms, each with corresponding reimaginings of citizenship. Several contemporary writings on citizenship have argued, as has been discussed at the beginning of this chapter, that 'trans-national tendencies', which have aggravated as a result of unprecedented trans-national movements of people and extraordinary electronic-mediation of communication, have given rise to powerful collective imaginings of diasporic public spheres beyond the nation-state (Appadurai 1998; Habermas 1992: 1–19; Soysal 1994; Vogel and Moran 1991; Hoffman 2004).

[16] Chatterjee explains the notion of bounded seriality put forward by Benedict Anderson in his book, *The Spectre of Comparisons*. Anderson identifies two kinds of seriality produced by modern imaginings of community: one, the unbound seriality of everyday universals such as nation, citizens, workers, and revolutionaries; the other being the bound seriality of governmentality manifest in 'finite totals of enumerable classes of population produced by the modern census and the modern electoral systems'. If the unbound serialities are potentially liberating, bound serialities are constricting and inherently conflictual, producing the tools of ethnic politics (Chatterjee 2004: 5–6).

As a result of such tendencies, they suggest, citizenship can no longer remain confined to the territorial boundaries of the nation-state, and must be replaced by new transnational and even post-national forms including world/global and cosmopolitan citizenship.

On the other hand, there is another strand which, while acknowledging transnational tendencies, does not disregard the fact that these tendencies manifest a hierarchical inclusion of nation-states in the global economy. Moreover, rather than being inexorable, irresistible, and irreversible equalizing and integrative forces, these tendencies emerge from conscious political and economic decisions, which are in turn embedded in calculations of maximization of profits/interests. The demand for rethinking citizenship in this strand takes the form of 'passing first through the disturbed zones within the nation-state' (Chatterjee 1998: 57–69). The nature of democratic politics and corresponding notions of citizenship within this framework have been envisaged variously. Ideas of a teeming 'multitude' (Hardt and Negri 2000) and the 'politics of the governed', for example, have gained currency even as new technologies/techniques of governmentality have developed in the garb of international regulatory mechanisms for promoting security, democracy, and welfare (Chatterjee 2004). Thus, alongside the spread of global networks of market mechanisms both in terms of transnational production sites and labour markets, an influential strand of writing, while acknowledging the unequal character of globalization and its propensity to aggravate inequality, has also identified the generation of new geographical spaces (for example, global cities), in which transnational political institutions and human rights regimes can flourish (Sassen 2001).

The 'multitude', as conceptualized by Michael Hardt and Antonio Negri, is 'the living alternative' which emerges within the empire (Hardt and Negri 2004: xii). The empire, unlike the imperialist orders in the past characterized by the sovereignty of the nation-state, is a new form of sovereignty which makes itself manifest in the form of 'network power'. The empire's network includes several differentially positioned nodes of power which include the dominant nation-states along with supranational institutions and major capitalist corporations. These diverse and unequal power nodes work in concert to sustain the global order with all its internal divisions and hierarchies (ibid.). In this context, the multitude is an emergent globalization from below that is immanent to capitalist globalization, namely, new social movements that are global in scale, straddling across sovereign states and popular nationalism. Unlike other 'notions of social subjects' like *the people*, which is a unitary

conception, or *the masses*, which while irreducible to a unity submerges all diversities in an overwhelming indifference, or the narrowly defined and exclusive *working class*, the multitude is composed of innumerable internal differences, which are intercommunicative and inclusive, working towards a shared common life in a spiral relationship or the democracy of the multitude (ibid.: xiii–xviii). The multitude of migrant labour, for example, constitute 'a new geography', having the potential of organizing into a truly universal and positive political power, and truly global and cosmopolitan forms of citizenship: 'The cities of the earth will become at once great deposits of cooperating humanity and locomotives for circulation, temporary residences and networks of the mass distribution of living humanity' (Hardt and Negri 2000: 397). For Hardt and Negri, this multitude needed only to be *organized* into a truly universal and positive political power, beginning with the demand for 'global citizenship'.

Partha Chatterjee, however, prefers to examine the 'disturbed zones of citizenship within', that is, the contradictory impact of global capital on the rural and urban poor, and the manner in which, while engaging with the state to articulate a countervailing politics of the governed, they constitute the space of political society. Rather than the realm of civil society where the exclusionary frameworks of modern citizenship are at play, it is the space of political society, Chatterjee argues, which embodies the world of political action. It is in political society, therefore, that people's struggles manifest social contradictions as well as identify the path through which the propulsion towards democratic citizenship may take place (Chatterjee 1998, 2004). It may, however, be argued that the disturbed zones of citizenship inside the nation-state may not be resolved without also simultaneously resolving the contests beyond the nation-state. A praxis of democratic citizenship has to take into account the multidimensionality of oppression and the multiple, intersecting, and overlapping axes of disadvantage that determine citizenship. Such a praxis has to grapple with the ideological structures of the state and its practices of rule, which are imbricated in the transnational structures of economic and political governance, and the ways in which the 'struggles over the state' and hegemonic articulations of nation-hood constitute citizenship through differential inclusions and erasures. This praxis has to, therefore, continue with the earlier idioms of struggle, as well as devise new ways by which to address the systems of domination that have mutated under the present contexts of economic liberalization, globalization, and political conservatism. Interestingly, these new

idioms of struggle, as Negri puts it, manifest both the decline of the 'unified capitalist front of command' (Negri 2008: 64) as well as the multiplicity of expressions of resistance the multitude is capable of. More importantly, the multiplicity of these expressions of resistance opens up a more independent and autonomous subjectivity, which can construct antagonistic and alternative forms from within the process of production 'to give rise to the invention of the *common*' (ibid.: 65). The idea of the common, in turn, denotes continuous and open activity rather than an outcome of actions, which would emerge from within and in opposition to fields of domination.[17]

While the incapacity of the state to act for the good of the people and the subsequent crisis of legitimacy is one aspect of the 'disturbed zone of citizenship within', the manner in which the fusion between the nation and the state has unfolded has given rise to yet another area of disturbance and contest. National identity, pointing to shared heritage and a common destiny of a people, held a liberatory promise in specific historical contexts by becoming the basis of sovereignty and political identity of citizenship—what has been called by Heater as a 'politicisation of the cultural concept of nationality' (Heater 1990, 1999). Yet, this fusion has also resulted in the culturalization of the idea of citizenship and a conflation of the boundaries between citizenship and nationality, between 'descent'/blood ties and civic and political membership, which have led to great terrors historically and in our own times (ibid.). The rise of Hindutva in the last two decades, for example, has sought to carve out an exclusionary Indian identity culled from dominant Hindu cultural symbols and practices. The universalist frameworks of citizenship espoused by the politics of Hindu nationalism effaces the manner in which citizenship is differentially experienced along axes of class, caste, gender, language, etc. Moreover, it manifests itself in unabashed and unapologetic violence against sections of the population with tacit or overt complicity of the state. Lessons from the violence against Muslims in Gujarat in 2002 show how this fusion can easily be mutated into denial, destruction, and elimination of difference through violent means.

Apart from the uneasy symbiosis within citizenship of the ethnic and civic elements, the promise of equality in citizenship occludes the ways in which citizenship in practice espouses a hierarchized universal,

[17] For an elaboration of the concept of 'the common', see 'Beyond Private and Public: the Common', in Negri (2008: 61–76).

incorporating citizens differentially and unequally. The idea of citizenship both as a momentum concept (as in Hoffman) and as expanding circles of inclusion (as in Turner) does not take into account how citizenship creates its own hierarchies by dictating differential terms of inclusion nor does it consider the potential of citizenship to radically change the framework within which and the tools though which citizenship articulates itself. Social movements have struggled to weave difference (along the axes of religion, caste, class, sexuality, etc.) into the notion of equality that informs the abstract notion of citizenship. The notion of 'differentiated citizenship' was put forward as a way by which the universalism of citizenship can be made effective by taking into account the specific needs of people belonging to groups which are disadvantaged by the generalized application of common or uniform frameworks/ standards of citizenship (Young 1989: 250–74). Thus, instead of masking differences, differentiated citizenship proposes a differentiated universalism, requires means that members of specific ethnic, linguistic, racial, and religious groups be incorporated into citizenship not only as individuals but also through their groups, so that their rights depend upon their group membership.

Significantly, the Constitution of India recognizes differentiated citizenship. While the masked citizen of liberal theory persists as the bearer of rights within the constitution, the community has also been included as a relevant collective unit of social and political life of the nation. There would, thus, appear to exist within the constitution, as Nivedita Menon has pointed out, not only two subjects of rights, namely, the individual and the community, but also two languages—one catering to the individual citizen and the other to the community—one strand of the language of rights claiming to identify individual differences and the other recognizing the particular contexts of different communities (Menon 1998). For Larson, however, there is, in fact, no compartmentalization in the language and subjects of rights in the Constitution and some seemingly individual-catering rights are interwoven with a commitment to community rights (Larson 1997). If, for example, one looks at Articles 14 and 15 of the Constitution, one sees that they assure equality before the law for every citizen and seek to substantiate this equality by prohibiting discrimination based on caste, religion, race, etc., thus mitigating differences generated by social contexts. The Articles, therefore, while catering to the individual, also reserve for the state a commitment to community-ship; in other words, allowing for certain rights in favour of Scheduled Castes (SCs),

Scheduled Tribes (STs), and Other Backward Classes (OBCs). Thus, Article 15 lays down that 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them' and then in Clause (4) reserves for the state the right to make 'any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes'. Similarly, Article 16, which guarantees equality of opportunity for all citizens in matters of public employment, also provides for compensatory discrimination in favour of certain communities. Article 17 abolishes untouchability, a debilitating condition imposed on the SCs (Larson 1997: 214–18). Part IV of the Constitution, entitled 'Directive Principles of State Policy', contains certain non-justiciable rights. These rights, unlike the ones in the preceding section, are not enforceable by courts, but are in the nature of reminders or directives for lawmaking to usher in conditions in which the rights enumerated in the previous section become more meaningful. Like the previous section, the rights in this section too show a 'simultaneous commitment' to both 'community-ship' and 'citizen-ship'; in other words, to both the community and the individual citizen (ibid.). Article 38, for example, directs the state to commit itself to 'promote the welfare of the people' by promoting a 'social order' in which 'justice, social, economic and political, shall inform all the institutions of national life' (ibid.). To achieve this, the state is asked to 'strive to minimise inequalities of income' and also 'eliminate inequalities in status, facilities and opportunities' (ibid.). The significant reminder, however, is that this justice and equality is to be achieved 'not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations' (ibid.). Article 46, likewise, instructs the state to 'promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Tribes' and 'protect them from social injustice and all forms of exploitation' (ibid.). By and large, the Directive Principles envisage an active role of the state in providing a range of socially ameliorative or welfare rights ranging from access to an adequate means of livelihood, equal pay for equal work, health and strength of workers, living wage for workers, provision of just and humane conditions of work, and the right to work, to education, to public assistance, to equal justice and free legal aid, to adequate nutrition and health, etc. (ibid.).

It may be pointed out, however, that the thrust of the commitment to community-ship in Articles 14–24, and thereafter in the Directive

Principles, is different from that woven into the Articles promising cultural rights to linguistic and religious minorities. The rights to equality and freedom enshrined in these Articles make special reference to the exceptional circumstances of disadvantaged groups providing for special protective measures to overcome socioeconomic disabilities. While the subject of amelioration are indeed specific groups of people debilitated by a long history of oppression, the purpose of the provisions is ultimately to remove the debilitating conditions or, alternatively, prepare the grounds for an increasing number of persons to integrate themselves into the horizontal camaraderie of autonomous citizens. The other cluster of rights (Articles 25–30), speaks a different language in so far as it explicitly prioritizes the cultural community, concerns itself with its preservation and is based on the assumption that constitutive communities are of overriding significance in shaping the needs and aspirations of the individual. A point may also be made here that the definition of community in cultural terms in this cluster means that only some individuals, that is, those belonging to these communities, come under the purview of these rights and are, therefore, especially and exceptionally affected by it.

The debates surrounding the right of communities to self-preservation have thrown up constant dilemmas and questions of democracy and justice within specific communities. The articulation and recognition of difference is a significant democratic principle and an important component of democratic citizenship. It destabilizes the 'false homogeneity' of the 'nation' and publicly highlights the fact that the political community is a complex cultural and ethnic aggregation (Bhabha 1994). Yet, the equality-difference framework is not unproblematic since differentiated citizenship in certain contexts works towards exclusion and marginalization, particularly of women. This is especially so in contexts of particular strands of multicultural citizenship which accept uncritically a community's right to self-preservation by claiming legal 'protection' and autonomy to impose 'internal-restraints'. This is particularly evident in the context of Jammu and Kashmir, with reference to the Permanent Resident's (Disqualification from Citizenship) Bill 2004, commonly known as the Daughter's Bill, passed by the Jammu and Kashmir Legislative Assembly by voice vote in March 2004. With the purpose of protecting the rights of the people of the state, especially to ownership of land from encroachment by outsiders, the Bill makes the citizenship of women temporary and contingent on marriage. It also deprives 'daughters' of their permanent resident status

and the rights that come with it, especially that of owning property, if they marry non-Kashmiri men (Singh and Vohra 2007: 151–71).

Hegemonic articulations of citizenship are, moreover, gendered. While citizenship for men is articulated as political, dynamic, and forward looking, women's citizenship is atavistic, looking back at the past and springing from cultural attributes. The different articulations of citizenship have far-reaching implications, manifested not only in women's differential access to resources, but also in the violent ways in which it is asserted and reinforced. It is significant that these dilemmas are often sought to be resolved through further closures. In an interesting formulation, Partha Chatterjee suggests 'a collective cultural right', 'not to offer a reason for being different' provided, however, that the cultural group 'explains itself adequately in its own chosen forum' (Chatterjee 1994b: 1774–6). While such a formulation is important to the extent that it draws the boundaries of relative rights, especially in a context where most questions demanding explanations for difference emerge from hegemonic political–cultural configurations, the problem with it is that the right to silence becomes a surrogate for dialogical vacuum. Moreover, the right to self-preservation by claiming legal 'protection' and autonomy to impose 'internal-restraints' gives rise to disturbed zones of citizenship (ibid.). In other words, such a right may lead to a rigid ossification of communities which may reinforce themselves as restrictive cultural containers. The policing of boundaries would continue to fester as a matter of contest, as the so-called internal matters of the community are prised open for scrutiny and debate.

Restrictive ossification, moreover, becomes a convenient alibi for deliberate exclusion through hegemonic discourses of masked citizenship and a justification for absence of interaction, thwarting any attempts to evolve a shared episteme for democratization. It is in these situations of silent and separate existence that intolerance of difference (cultural, religious, racial, gender, etc.) flourish, aggravated by what Hannah Arendt calls 'monstrous lies' in a mass society characterized by conformity and intolerance of dissent or plurality of any kind—ideological or cultural. While the immediate context of Arendt's writing was Nazi Germany, the events in Gujarat in February–March 2002, while reminiscent of what happened in Germany and elsewhere in Eastern Europe, are perhaps even more frightening and foreboding since much of it was justified as retributive justice handed out in the name of the people by a democratically elected government. Almost ominously, Indian democracy, the legal system, statutory institutions,

and the judiciary were implicated in this retribution, as Narendra Modi was restored as Chief Minister in the assembly elections that followed the killings. The Prevention of Terrorism Act (POTA), an extraordinary and draconian law enacted to curb terrorism, was subsequently applied selectively in the state and slapped on the accused (all of them Muslims) in the Godhra case where a fire in the coach of the Sabarmati Express carrying Hindu *kar-sevaks* resulted in the death of around 56 persons.[18]

Such processes result in communities becoming sanctuaries with a simultaneous buttressing against the indignities and dehumanizing violence of the public space (Feldman 1992: 36–7). In such a context, the right to silence ascribed to communities read with the right to be different *and* not give a reason for it, may be constructively interpreted as the right not to self-incriminate, and the right to defend collectively, especially in contexts where the community is identified and targeted as 'suspect'. This is especially so, since violence of communities is seen as irrational and disruptive, emotional and self-seeking or selfish, while violence of the state is seen as curative, precise, stabilizing, and a necessary corrective. This is seen particularly in the processes by which law becomes an integral part of the organization of state violence, while ultimately manifesting the *raison d'etat* or 'reasons of the state'.[19]

CITIZENSHIP'S GLOBALITY OR 'CRISIS IN CITIZENSHIP'?

As discussed in the beginning of this chapter, the chant of 'crisis in citizenship' is inextricably associated with migration and often the awkward and threatening presence of aliens/outsiders. The figure of the migrant perhaps produces the maximum anxieties around whom discourses of crisis in citizenship are woven. It is interesting how in all citizenship models and citizenship practices migration has increasingly been seen as having ramifications that produce a 'crisis in citizenship'. The republican tradition, for example, gives centrality to social solidarity in the sense of a 'social bond' between the individual and society, which is expressed in the active participation of the citizen in public life. Owing to its ambivalent relationship with society, the migrant is seen as disruptive of this solidarity. The liberal tradition sees citizenship as a social contract based on equal rights by all individuals and views social integration in terms of freely chosen relationships among individuals. Migration in the liberal tradition is seen as leading to incomplete, distorted, or discriminatory citizenship owing to the legal incapacity/inadequacy of the migrant to enter into freely chosen deliberative contractual relationships with other individuals. In both traditions thus, the 'crisis in citizenship' is associated with migration. The inflow of diverse peoples is seen in particular as weakening the sense of 'commonality' or the 'social bonds' that produce solid citizenship expressed in meaningful participation in public life.

In many ways, the disturbed zones of citizenship are effectively zones of contest over appropriate norms, conditions, and terms of membership. While much of the literature on citizenship concerns itself with cross-border migration, a large proportion of migration takes place across states within the country. Driven by poverty and distress, large-scale migration to cities takes place from regions gripped by agrarian crisis. While people have always been mobile in search of livelihood and economic opportunities, the period from the 1990s onwards has experienced an exponential increase in distress migrations, owing to a complete breakdown of rural economies. Even more significant is the fact that migration from rural areas as a result of this breakdown is often in the nature of an exodus. Most of the time, the exodus is of those who are already in a state of marginality. Thus, if one were to look at the figures given by the Andhra Pradesh Land Committee Report (2007),[20] ones sees that the poor have progressively lost control over land and the SCs and STs, among whom the majority are in the category of small or marginal farmers and a substantial number are agricultural labourers,

[18] Figures cited in newspapers showed that 62 persons, all of them Muslims, were arrested for the Godhra carnage under the Prevention of Terrorism Ordinance (POTO), while not one of the 800 arrested for the violence against Muslims thereafter were booked under the Ordinance. The Gujarat arrests were largely seen as manifesting the arbitrary powers conferred on the executive by vague definitions of 'terrorism' in POTA. Those arrested for the Godhra carnage were charged under POTO for committing a 'terrorist act', while the killing of hundreds of Muslims was dismissed as a 'spontaneous reaction'. For the details of the selective application of POTO/POTA in Gujarat, see Ujjwal Kumar Singh (2007).

[19] The considerations of reasons of state are generally understood as emerging in exceptional or extraordinary conditions, which imperil the existence of the state. Theoretically, therefore, notions of state sovereignty, the identification and delineation of an exceptional and imperiling condition, and its co-relate—the definition of normalcy—are necessary derivatives of *raison d'etat*.

[20] The Land Committee was constituted by the Government of Andhra Pradesh under the chairmanship of Koneru Ranga Rao, the Minister for Municipal Administration and Urban Development in 2004, to assess the implementation

have been the most affected. Not only has the average landholding of the SCs and STs declined, in the years between 1961 and 1991 (the report points out):

1. About one lakh people belonging to the SCs lost landownership;
2. Of the people who are able to work, only 12 per cent are holding land, which has decreased from 23 per cent in 1961; and
3. The percentage of agricultural labourers has increased from 57 per cent in 1961 to 72 per cent in 1991.

Interestingly, since the 1990s, the rate of distress migration in most states has also increased. In the case of Andhra Pradesh, the exponential growth in out-migration from the state to Mumbai and other parts of Maharashtra has been pointed out in a series of articles written by P. Sainath. The article 'The Bus to Mumbai' in particular points out how in some cases the majority of the village population had gone out looking for work on those buses (see Sainath 2003, 2004a, 2004c).

Significantly, if one were to look at the process of migration as it has unfolded over the last twenty years, one sees it as leading from one form of dispossession to another, each distancing the migrant from access to resources. Moreover, in the new context of economic growth, most new jobs are contingent, casual, and informal, in many cases involving the denial of the right to form unions and struggle collectively. In such a situation, wage labour becomes the basis of social exclusion and differential citizenship. It is interesting how ownership of property—the archaic principle that defined solid citizenship and was a primary requirement for citizenship for most of citizenship's history, whether in the classical republican or the liberal bourgeois traditions—continues to determine experiences of citizenship. It is also significant that within the realm of social citizenship, political and economic rights tend to interweave and interlock so that one form of deprivation leads viciously to another.

Interestingly, social policies have remained constrained and compelled by the requirement to work with fixed, stable, and precise categories, so much so that social service benefits under the proposed Social Security

of land distribution programmes of the government and suggest ways of their effective implementation. The committee submitted a report in 2006. In the context of widespread unrest over the land question in the state, the government kept the report under wraps, releasing only its recommendations in May 2007, despite growing demand from political parties and grass-roots organizations to make the entire report public and implement its recommendations.

Bill may not accrue to the vast number of migrant workers, especially seasonal/short duration migrants who do not have fixed domicile constituting about 20–30 million and 5–8 per cent of the work force.[21] Moreover, while the problem of addressing the extension of social security to the vast numbers of informal and migrant workers has been expressly recognized, the informal worker has been defined in a way that it excludes 'unpaid workers' from its ambit. This elimination of unpaid workers from social security coverage has serious gender implications since it is women who constitute the overwhelming proportion of unpaid family labour (Neetha 2006: 3496–8).

Moreover, it is not just social security cover that is denied. Political citizenship, which is also dependent on principles of governmentality that demand enumeration and identification of the citizen-voter, is also denied to the migrant worker. A primary requirement of enumeration as citizen–voter is residence, which implies that the citizen–voter must be identifiable with a stable address. Since most migrants are, as P. Sainath terms it, 'locked into endless step-by-step migrations' and almost all migrant workers tend to be concentrated in clusters of villages within certain districts, large numbers of rural poor, as well as certain seats and regions, get excluded from the electoral process.[22]

In the last few years, the 'threatening' presence of the working class population, in proximity to middle class colonies in large metropolises, has been sought to be eliminated through factory closures and slum evictions.

[21] For a discussion on the extension of social security to reach out to the informal economy, see Kannan (2007: 19–37). Kannan points out the formidable challenges to the extension of social security for informal workers in view of the problem of proper worker identification, lack of specified work place identity, lack of organizational identity, and inadequacy of regular work, to name only a few. To overcome the 'fundamental dilemma' between operational feasibility and the requirement for social security of these vulnerable and working poor, Kannan calls for innovative approaches. For a discussion on the social security scheme for the organized sector proposed by the National Commission for Enterprises in the Unorganised Sector, see Kannan, Srivastava, and Sengupta (2006: 3477–80).

[22] The National Sample Survey's definition of the 'last usual place of residence' of a migrant is 'the village where a person has stayed continuously for at least six months immediately prior to moving to the present village/town'. Moreover, as Sainath points out, there are some specific periods in the survival cycle of migration, when they are most likely to be out of their villages. The months of April and May, when the fourteenth General Elections (April–May 2004) was held, were ironically the months when absences from villages are at their peak. At a deeper level, thus, economic processes and policies that have devastated the

This has created a category of citizen-outsiders caught in a perpetual cycle of relocations and search for stable livelihood—in other words, a share in the resources of society that they have contributed in creating and replenishing (Padhi 2007: 73–92). The 'cleansing and beautification' drives carried out assiduously in cities manifest a politics of 'spatial purification'. Through this politics, the middle class lays claims over public spaces, and moves to cleanse these spaces of the poor and the working classes with the help of state organs like the judiciary and municipal corporations and policies of urban development (Fernandes 2006: 137).

The migrants remain, therefore, 'residual citizens'—cast outside the 'elite' domain of civil society for being deficient in the acumen, capacity, and skills of citizenship. Moreover, they are depoliticized through governmental practices, which either criminalize them or bring them differentially into the domain of governance as target groups in welfare regimes. The 'residual citizens' who are continually filtered out of the elite domain of masked and unmarked citizenship, makes the promise of universal citizenship—which Saskia Sassen and Negri and Hardt see in the 'new geography' generated by emergent globalization from below in the global cities—ironical. Much of this new geography is constituted by a disenfranchised and dispossessed workforce administered and regulated as 'populations' without 'sovereign citizenship'. More often than not, existing ameliorative and welfare schemes are not available to migrants either due to the high levels of unawareness about them or owing to the disinterest in the issues of migrants in the bureaucratic machinery.[23]

Despite the fact that movement has been an inseparable aspect of human existence, the migrant, as an unsettled and floating category, has for various reasons remained the perpetual citizen-outsider. Moreover, the migrant is itself a paradoxical category in that it is not only produced by state practices of rule which include political, social, economic, and developmental policies and practices, but has to be continually slotted out and simultaneously included on differential terms. Thus, the displaced, the vagrant, the footloose migrant, the stateless person, etc. have all led a precarious existence, criminalized at certain times, subjected to perpetual relocation at others, and kept in a state of deferred and suspended citizenship. As discussed earlier, the figure of the migrant produces the maximum anxieties around which discourses of 'crisis in citizenship' are woven. It is interesting how in all citizenship models, as mentioned at the outset, migration is increasingly been seen as having ramifications that produce a 'crisis in citizenship'. It is also significant that citizenship practices in all models of citizenship have responded to this 'crisis' by introducing elements of legal closure, based on prioritization of descent.

Through an analysis of relevant laws and judgments, this work will examine how the legal-juridical frameworks of membership have expressed, articulated, or, alternatively, addressed the 'crisis in citizenship'. An exploration of the relationship between citizenship and migration gives a unique opportunity for examining the inherent paradox in citizenship. As a 'momentum concept', as discussed earlier, citizenship has been seen as emancipatory and dynamic, as inherently integrative and universalizing, and as having a self-propelling capacity to expand and deepen itself. Simultaneously, however, as shall be seen in the discussions of the category of the migrant as it figures in citizenship laws in India, citizenship is an exclusive category, limiting membership through specific rules identifying members and outsiders. It is also significant how citizenship is deeply embedded in principles of governmentality, so that despite its claims to dynamism and promise of inclusion, citizenship is preoccupied with identifying in precise terms through enumeration and categorization, those who belong and those who do not, and is actually apprehensive of movement of people which threatens to unsettle fixed categories.

Significantly, migration is mentioned in the chapter on Citizenship in the Constitution of India in the specific context of Partition, which is, incidentally, also the primary context within which citizenship gets enframed in the Indian Republic. The Constitution, which provides the basic legal framework of citizenship, refers to the migrant while providing for the procedure for the registration of displaced persons, evacuees, and returnees from Pakistan on permanent resettlement visas or entry permits, as citizens of India. The 'migrant' as a category enters into the Citizenship Act conspicuously through an amendment in 1986 and then again in 2003. Unlike the moment of citizenship's commencement just after Partition in which migration provided the condition of passage into citizenship, migration in 1986 and 2003 was explicitly

rural economy are also responsible for the political exclusion of the rural poor, posing the question whether institutional structures by themselves are sufficient for a democratic electoral process (see Sainath 2004).

[23] A study of seasonal migrants from the Dumka district of West Bengal, for example, showed that migrant workers were excluded from house building grants earmarked for poor families, the Indira Awas Yojana, because they were deemed likely to be absent during the stipulated period for building. Similarly, in the destination areas, the study showed that pregnant and neonatal seasonally migrant women did not gain access to Integrated Child Development Scheme facilities. See Rogaly, Biswas, Coppard, Rafique, Rana, and Sengupta (2001:4556).

associated with illegality. In 1986, the Citizenship Act set in motion parallel systems of identification of 'foreigners' and 'illegal migrants', deferring citizenship in some cases and attributing illegality in others. In 2003, an amendment in the Citizenship Act inserted the category of the overseas Indian citizen professing the de-territoriality of Indian citizenship. Ironically, however, coincident with the legal affirmation of transnational citizenship in India, the association of Indian citizenship with descent was simultaneously inscribed, with citizenship by birth becoming stringent and conditional. Thus, while the process of closure marked by the constriction of citizenship by birth began in 1986 itself, it is indeed ironical that the claims of encompassment which overseas citizenship made, was synchronous with further entrenchment of citizenship's association with descent and a closing of ranks among those born of Indian parents. It is significant how the category 'illegal migrant' made its appearance in the legal code of citizenship simultaneously with the overseas citizen, affirming the territorial and cultural closure which overseas citizenship only apparently opened up.

In this work, a chapter is devoted to each of the above-delineated periods of synchronous expansion and closure. Each period is marked by the specific political contexts in which the legal-formal frameworks of citizenship take shape; at the same time, it manifests the forms that endure from earlier periods, so that every period signifies a coalescent present—encapsulating the past and having ramifications for the future. Thus, this work slices off from the historical trajectory of legal-formal citizenship in India, three decisive moments: citizenship at the commencement of the Indian Republic and the enactment of the Citizenship Act of 1955, the amendment of the Citizenship Act in 1986 following the Assam Accord, and the amendment of the Citizenship Act in 2003 and again in 2005, resulting in the insertion of the category of the overseas citizen of India. It is significant that all of these three moments are especially and specifically concerned with the migrant. While each moment refers to the migrant in a particular context, the category is integral to the territorial and political demarcation of citizenship and interlinks the three seemingly disparate moments into a coherent map of the development of the legal framework of citizenship in India.

The analysis will be divided into three chapters which will map changes in citizenship laws *chronologically* and, at the same time, identify the constituent strands of citizenship—civil, political, and social—and the axes of class, caste, religion, and gender around which these strands are experienced. Yet, the chronology attempted in this work is to be seen

not in terms of evolutionary change, but more in terms of what Immanuel Wallerstein calls *chronosophy*. This is in order to specify that changes in the legal frameworks of citizenship do not mark an evolutionary progression, but a development of ideas and institutional practices punctuated by conscious decisions and consisting, therefore, of a complex of interlocking and dissonant strands imbricated in specific historical contexts.[24] More precisely, it will focus on the way in which the constituent elements of citizenship have been fashioned around specific categories, groups, and communities, rendering them illegal or unwanted at specific historical moments and, at others, including them differentially through special protective measures. It may be noted that the frameworks of inclusion work through a complicated process of deferral, exclusion, or excision from legal citizenship or through differential inclusion. The 'migrant' has been integral to the delineation of legal citizenship, its philosophical underpinnings, and the political and social practices that determine its form and content. This volume will, therefore, bring out the centrality of migration in enframing the lived experiences of citizenship and the category of the 'migrant' as the node around which discursive practices surrounding citizenship are woven.

The analysis will be divided into three chapters, each identified with what may be called an alephian moment of citizenship, manifesting both simultaneity and history. In order to identify the contexts in which the dissonant yet interlocking strands in citizenship make themselves visible and by implication more significant, one conceptual framework that has come across as most enticing is Roberto Alejandro's (1993) description of citizenship as possessing an alephian character. The aleph, Alejandro points out, is that fluid juncture at which the past, the present, and the future coalesce into a collective identity, which is, however, not a fixed image (ibid.: 1–2). What is, however, analytically important for our purposes is

[24] First used by Krzysztof Pomian (1977) chronosophy refers to the assumptions we make about the relationship between the past, present, and future (Wallerstein 1991: 178). Social sciences have been dominated by linear chronosophy suggested in the theory of progress, depicting an inevitable and irreversible ascending curve. Wallerstein suggests an alternative chronosophy which he calls the theory of possible progress, where historical systems marked by cyclical rhythms and secular trends are interspersed with successive moments in which major historical choices have occurred. In this work, we use the word chronosophy as in Wallerstein to look at the trajectory of citizenship in terms of a historical relationship where transitions are not part of continuous historical process, but moments of historical choice.

that the aleph, being the first letter of the Hebrew and Arabic alphabets, denotes the promise of a beginning. Again, in Hebrew mathematics, the aleph denotes numbers which signify the cardinality or size of infinite sets. The theme of beginning and infinity is, therefore, imbued in the aleph. Another meaning of the aleph is derived from a short story by the famous Argentinian writer and poet Jorge Luis Borges, titled *The Aleph*, first published in 1949. The aleph in Borges' story is a point in space that contains all other points. Anyone who gazes into it can see everything in the universe from every angle simultaneously, without distortion, overlapping, or confusion. Combining these two ways in which the metaphor of the aleph is used, one may initiate one's examination of the topology of citizenship in India by examining 'contemporary' citizenship as the 'coalescent present', that is, as a conjunctural condition where the past, present, and future of citizenship meet in an alephian moment. We may also see the contemporary moment as presenting itself as the illusionary cosmic space of infinite universality and the compressed timelessness and space-neutrality of the aleph. Yet, both the coalescence and the simultaneity of alephian citizenship are deceptive in the sense that the analogy of the aleph is an expression, quite like the 'universals' created by state practices of rule, of ahistorical horizontal time, occluding the contests and struggles that inform citizenship. In this work, I will map the contours of contemporary citizenship in India by looking at citizenship's present as an alephian moment stressing upon coalescence and simultaneity and, at the same time, attempt at an unravelling of the alephian mask of citizenship, by looking at the aleph also as a dimension of history.

This study hopes to enrich the theory of citizenship by looking at the experience of citizenship in India through its different momentums, by unravelling its disturbed zones, and the masks of occlusion. One may see contemporary citizenship as the 'coalescent present', that is, as a conjunctural condition where the past, present, and future of citizenship meet in an alephian moment. For example, the category of the Overseas Citizen of India (OCI) inserted through an amendment in 2003 in the Citizenship Act of 1955, is often presented as embodying citizenship's contemporary moment of transnational universality—the compressed timelessness and space-neutrality of the aleph. Yet, the transcendental moment of citizenship marking the expansive universe of Indian citizenship and its de-territorialization, is in practice fraught with a series of closures, some of which had their origins in the moment of the commencement of Indian citizenship. This is to be seen especially in the finality with which the excision from citizenship was laid down in the Constitution for those who had migrated to Pakistan after 1 March 1947 and who remain excluded from the ambit of overseas citizenship for persons of Indian origin. Moreover, each moment presents a complex larger picture, constituted by citizenship's haphazard rather than momentous movements towards encompassment.

The first chapter, entitled 'Citizenship at the Commencement of the Republic', examines the legal-formal articulation of citizenship in the context of the Partition, the process of state formation, the emergence of the twin nation-states of India and Pakistan, and the manner in which these contexts determined issues of belonging and legal membership. It shows how in the hiatus between the commencement of the Constitution (1950), which laid down the frameworks of citizenship in the immediate contexts of independence and the Citizenship Act of 1955, which was expected to take into account all future contexts, citizenship in India occupied a zone of liminality. The liminal state of citizenship was fraught with complexities which unfolded in multifarious and contending ways. While the element of choice and voluntariness was put down as a legal possibility amidst the tumultuous movements of people across the border, there were tensions in the way in which choice was determined. To unravel these aspects of citizenship at the commencement of the Republic, the chapter looks at specific categories, namely, 'registered/ Pakistani wives', 'alien women', 'minors', and 'displaced persons'. An examination of these categories shows how the interregnum between 1950 and 1955 constituted not just the physical threshold of passage into citizenship, but also a fuzzy legal-institutional space of possibilities, riddled and interspersed, however, with marginal and othered locations which encumber the nation-state. Citizenship is often seen as concerned with demarcating in precise terms the territorial boundaries of the nation-state and the vexed question of who could claim its legal membership. But the process of executive decision-making and the court decisions ultimately show how citizenship at the commencement of the Republic was riddled with contests. Interestingly, both the contest and its resolution were embedded in processes of state-formation and institutional ordering, as seen in the ways in which institutions perceived, interpreted, and eventually resolved their respective powers of decision making over citizenship matters.

The second chapter, entitled 'The Citizenship Amendment Act of 1986', examines the politics of place-making, the marking out of ethno-spaces, and the setting in motion of a process whereby citizenship's association

with descent is affirmed. Since the amendment in the Citizenship Act pertained specifically to the state of Assam in northeastern India, the chapter examines the complex reconfiguration of political forces and unfolding of power relations between the central government and the state of Assam on the question of definition and identification of illegal migrants, through the Assam Accord of 1985, the Citizenship Amendment Act of 1986, the contests around the Illegal Migrants Determination by Tribunal Act (IMDT) of 1983, and the Supreme Court Judgment in August 2005 striking it down. The chapter shows how the illegality/alien-ness of the migrant became central to the construction of the Assamese identity in the 1980s and how the 'migrant' figured in precarious relationships of consensus and antagonism with the 'citizen', depending on the nature of political/electoral contests between the centre and state governments. The chapter also shows how these contests produced the migrants as the 'constitutive outsiders'—as 'residual citizens'—who occupied a perpetual zone of uncertain, suspect, and indeterminate citizenship.

The third chapter, entitled 'Blood and Belonging', looks at the political processes whereby the legal recognition of the category of the OCI was accompanied by the reinforcement of citizenship's association with blood ties and descent, the consummation of a process which had begun with the 1986 amendment. The chapter unravels the category of the OCI to show how it manifests a tendency towards 'holding together the flock' and a response to the 'destabilization' or 'crisis' in citizenship that is seen as occurring in national citizenship owing to transnational movements of populations. Thus, on the one hand, the OCI seems to suggest a widening of the scope of citizenship to a transcendental notion not confined to territorial membership. But, on the other, the fact that it is inextricably tied up with descent and comes synchronously with amendments in citizenship laws that restrict citizenship by birth, makes its trans-nationality suspect. The OCI must then be seen as characterizing a shift in the philosophical and ideological basis of citizenship from democratic, associational, and civic forms to hegemonic integration. The chapter, moreover, widens the examination of contemporary citizenship practices in India to show how the ideological shifts are made manifest in a corresponding trajectory of disenfranchisement, dispossession, and disempowerment that has been occurring within the country in relation to the migrant workers in cities.

1

The Citizenship Act, 1955

Liminal Citizenship at the Commencement of the Republic

Citizenship at the commencement of the Republic was an encompassing moment,[1] rooted in the shared identity of a sovereign self-governing people having come together as a community of equals with an overarching 'national identity' which embraced the entire national community as well as each member of the political community. The transition from subject-hood to citizenship was, however, also tied to the history of the creation of nation-states and the drawing of borders in the Indian sub-continent. In this chapter, I shall examine the legal-formal frameworks of citizenship in the context of the Partition and state formation in India, and the manner in which these contexts determined issues of legal 'belonging' and membership. While the Constitution of India does not define the word citizen, Part II of the Constitution (Articles 5–11), entitled 'Citizenship', addresses the question of identification of Indian citizens at the commencement of the Constitution, drawing the lines between citizens and non-citizens/aliens. This demarcation of citizenship at the commencement of the Republic seems to have been responding largely to the contexts of Partition. A close examination of citizenship in this period

[1] The logic of encompassment as discussed in the introductory chapter, according to Werbner and Yuval-Davis, works to resolve the contradiction between abstract universalism and difference, posed by a critical theory of citizenship (Werbner and Yuval-Davis 2005:10). According to this logic, abstract universalism is an encompassing and transcendental value, which when inflected by the propelling force of dialectic, assumes a relationship within which difference may be recognized.

shows both contest and anxiety over the determination of the national space, whereby the territorial as well as the cultural and legal domain of citizenship was marked and affirmed. Thus, even as it talks about citizenship accruing to Indians on account of birth and domicile, Articles 5 to 7 of the Constitution concern themselves largely with the modalities of deciding the complicated question of citizenship of people 'migrating' between India and Pakistan between the constitutional deadlines of 19 July 1948 and 26 January 1950, the day the Constitution came into force. Significantly, while laying down the frameworks of citizenship in the Constitution for the new Republic, the 'migrant' was crucial to the affirmation of the sovereign identity of the nation. Consequently, the rehabilitation of the refugee, the legal accommodation of the returnee, and the recovery and rehabilitation of abducted women, in other words, the relocation and restoration of the 'misplaced' or 'displaced', was also of critical significance for the invocation of citizenship.

While the citizenship provisions in the Constitution addressed the contexts of the birth of the new nation, the Citizenship Act of 1955 was enacted by the Parliament under Article 11 of the Constitution to take into account all future issues pertaining to citizenship. Between 1950, when the Constitution came into force, and 1955/1956, when the Citizenship Act was enacted and Citizenship Rules were framed, there was, thus, a hiatus—a state of 'legal vacuum'—on the question of citizenship. Ironically, however, while the legal framework of citizenship was being developed, people were actually moving across borders on a variety of travel documents, entry permits, and long-term settlement visas. When the Citizenship Act came into force, and decisions on the citizenship of people who had moved across borders in the intervening period was to be taken within its frameworks, these cross-border movements came to be imputed with 'intention' and subsequent ascriptions of legality and illegality.

Thus, in the interregnum between the commencement of the Constitution of India (1950) and the Citizenship of India Act (1955), citizenship in India occupied a zone of liminality.[2] This liminal state of citizenship was fraught with contests which unfolded in multifarious and contending ways. While the element of choice and voluntariness

[2] The etymological roots of liminal/liminality are derived from the Latin word *limen*, which means threshold. The concept of liminality referring to transition and passage is to be found largely in works of anthropology and literature, for example, Victor Turner (1967, 1969, 1974).

was put down as a legal possibility amidst the tumultuous movements of people across the border, there were tensions in the way in which choice was determined, seen especially in the finality with which the excision from citizenship was laid down in the Constitution for those who had migrated to Pakistan after 1 March 1947. To unravel these aspects of citizenship at the commencement of the Republic, this chapter looks at specific categories, namely, 'registered/Pakistani wives' and 'alien women', 'minors', and 'displaced persons' to show how the interregnum constituted not just the physical threshold of passage into citizenship, but also a fuzzy legal-institutional space of possibilities, riddled and interspersed, however, with marginal and othered locations which encumber the nation-state. Citizenship is often seen as concerned with demarcating in precise terms the territorial boundaries of the nation-state and the vexed question of who could claim its legal membership. But the process of executive decision-making and the court decisions ultimately show how citizenship at the commencement of the Republic was fraught with contests. Interestingly, both the contest and its resolution were embedded in processes of state-formation and institutional ordering, as seen in the ways in which institutions perceived, interpreted, and eventually resolved their respective powers of decision-making over citizenship matters.

This chapter will explore the liminal spaces of citizenship that emerged in the interregnum between the enforcement of the Citizenship provisions as contained in the Constitution of India and the enactment of the Citizenship Act of 1955 through a study of archival material, primarily files pertaining to citizenship in the Indian Citizenship section of the Home Ministry in the 1950s, citizenship laws, and court judgments. The chapter argues that: (1) in the interregnum between constitutional provisions (1950) and the Citizenship Act (1955), citizenship in India occupied a zone of liminality; (2) the liminality of citizenship accrued from the fact that the interregnum embodied the threshold space between the nation-state and state-formation/making; (3) the occupation of a liminal space attributed citizenship with indeterminacy and ambiguity; (4) 'registered/alien/Pakistani women/wives', 'minors', and 'displaced persons' were liminal categories, in the sense that they signified both the uncertainty of the moment of passage and the change in status that such passage was to bring with it; and (5) the liminal state of citizenship was fraught with contests over precise legal categories in the absence of/in anticipation of the Citizenship Act and was imbricated in processes of state-formation and issues of national belonging.

Before one ventures into an exploration of the manner in which restoration, relocation, and alternatively, excision and denial of citizenship took place, it will be pertinent to discuss briefly the legal frameworks of citizenship as they obtained at the birth and the early years of the Indian Republic.

CONSTITUTIONAL AND STATUTORY PROVISIONS FOR ENFRAMING THE CITIZEN

The date of the enforcement of the Constitution—26 January 1950—marked a crucial change in the status of the people of India. They were no longer British subjects, but citizens of the Republic of India and derived their status as such from the Constitution, which they, in their collective capacity as *the people* of India, enacted, adopted, and gave to themselves. While the word citizen is not defined in the Indian Constitution, Part II of the Constitution (Articles 5 to 11), entitled 'Citizenship', addresses the question, 'Who is a citizen of India?', at the time of the commencement of the Constitution on 26 November 1949, that is, the date on which the Constitution was *adopted* by the Constituent Assembly. Although the Constitution came into full force only on 26 January 1950, provisions dealing with citizenship (Articles 5 to 9) became operative on the date of its commencement. The distinction between the Indian citizen and the non-citizen (alien) thus became effective on this date. While a citizen enjoys certain rights and performs duties that distinguish him/her from an alien, the latter has certain rights of 'personhood' that s/he possesses irrespective of the fact that s/he is not a citizen.

Under Articles 5 to 8 of the Constitution, the following categories of persons became the citizens of India at the date of the commencement of Constitution: (1) those domiciled and born in India; (2) those domiciled, not born in India but either of whose parents was born in India; (3) those domiciled, not born in India, but ordinarily resident in India for more than five years; (4) those resident in India, who migrated to Pakistan after 1 March 1947 and returned later on resettlement permits; (5) those resident in Pakistan, who migrated to India before 19 July 1948 or those who came afterwards but stayed on for more than six months and got registered; and (6) those whose parents and grandparents were born in India but were residing outside India.

The Constitutional provisions may be seen, therefore, as laying down the terms of citizenship for two broad categories of people: (1) those who were 'found' to be residing in India at the time of independence and automatically 'became' Indian citizens and (2) those who, unlike the earlier category, moved across borders, a category which again had different patterns of movement: (a) those who migrated from Pakistan to India after Partition and before 19 July 1948; (b) those who migrated from Pakistan to India *after 19 July 1948* but *before the commencement* of the Constitution and registered themselves as citizens of India before the concerned authority; and (3) those who went to Pakistan after 1 March 1947 and returned to India under a permit for resettlement or permanent return issued by competent authority.

The Citizenship Act, 1955

Article 11 of the Constitution authorized the Parliament to make laws pertaining to acquisition and termination of citizenship subsequent to the commencement of the Constitution. The Citizenship Act (LVII of 1955) made elaborate provisions specifying how citizenship could be acquired by birth, descent, registration, naturalization, or through incorporation of territory. Following the Assam Accord in 1985, an amendment was made to the Citizenship Act in 1986, which inserted Article 6A, making way for a sixth type of citizenship applying to the state of Assam.

As far as *citizenship by birth* was concerned, everyone born in India after the commencement of the Constitution but before the amendment of the Act in 1986, unless excluded, was to be considered a citizen of India. After the amendment of 1986, everyone born in India and either of whose parents was a citizen of India at the time of his/her birth, unless excluded, was to be considered a citizen of India.

A person was to be considered *citizen by descent* if he or she was born outside India after 26 January 1950 but before the commencement of the Citizenship (Amendment) Act 1992, if his or her father was a citizen of India by birth. Following the Citizenship (Amendment) Act, 1992, a person could be a citizen of India by descent if either of his parents was a citizen of India at the time of his/her birth. The 1992 amendment removed the gender discrimination that had so far existed in the provision of citizenship through descent.[3]

As far as *citizenship by registration* is concerned, a person of Indian origin, that is, if he or either of his parents were born in undivided India and who was ordinarily resident in India for five years before applying

[3] Those born outside undivided India at the time of the commencement of the Constitution could enrol themselves as citizen by descent only. By descent, citizenship can be extended generation after generation (Rodrigues 2005: 170).

for citizenship, is entitled to be an Indian citizen by registration. Under this type, the following categories of persons can seek citizenship: (1) persons of Indian origin resident in any country by following a set of procedures; (2) a person married to a citizen of India and resident in the country for five years immediately before making an application; (3) minor children of persons who are Indian citizens; and (4) persons of full age and capacity of a country specified in Schedule I (Commonwealth countries) of the Citizenship Act 1955 (Rodrigues 2005: 171).

A person may become a citizen of India by *naturalization* if he or she has resided in India for at least five aggregate years in the past seven years, and continuously for twelve months after that, does not belong to a country which disallows citizenship by naturalization, has renounced the citizenship of his or her country, has adequate knowledge of a language specified in the eighth schedule of the Indian Constitution, and intends to reside in India or serve in government service or an international organization of which India is a member.

The fifth category of citizenship, *through the incorporation of territory into India*, derives from a person's membership in specific 'incorporated' territories by virtue of Citizenship Orders, that is, Goa, Daman, and Diu by virtue of the Goa, Daman and Diu Citizenship Order, 1962, Dadar and Nagar Haveli by virtue of the Dadar and Nagar Haveli (Citizenship) Order, 1962, Pondicherry by virtue of the Citizenship (Pondicherry) Order, 1962, and Sikkim by virtue of the Sikkim (Citizenship) Order 1975.

The Citizenship Act 1955 was amended in 1986, adding Article 6 A, which made special provisions for 'citizenship of persons covered by the Assam Accord'. Under the amended Act applying specifically to Assam, (a) persons of Indian origin (if the person, either of his parents, or any of his grandparents was born in undivided India) who had come to Assam before 1 January 1966 from 'the specified territory' (territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1986), including those whose names figured in the electoral rolls used for the 1967 general elections, and who had been ordinarily resident in Assam from the date of their entry 'shall be deemed to be citizens of India from the 1st day of January'. On the other hand, those persons of Indian origin who had entered Assam from Bangladesh on or after 1 January 1966 but before 25 March 1971, had been ordinarily resident in Assam after their entry, and had been detected to be a foreigner (by a Tribunal constituted under the Foreigners (Tribunals) Order 1964) could register themselves as Indian citizens. Unlike those persons of Indian origin who had entered Assam before 1 January 1966, this set of entrants would 'from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date', have the same 'rights and obligations' as an Indian citizen, without, however, having the right to vote. The name of this person, 'if included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection', will be deleted, and he or she 'shall not be entitled to have his name included in any electoral roll', before the expiry of ten years.

The Citizenship (Amendment) Act of 2003 introduced a version of dual/transnational citizenship for persons of Indian origin (PIOs), in the form of 'Overseas Indian Citizenship'. Under the amended Act, an OCI is a person who is of Indian origin and citizen of a specified country, or was a citizen of India immediately before becoming a citizen of another country (on a specified list), and is registered as an OCI by the Central government. The Citizenship Amendment Act, 2003 made several amendments to existing sections and inserted sections 7A, 7B, 7C, and 7D, entitled 'Overseas Citizens', that dealt with the definition and registration of overseas citizens,[4] conferred specific rights to them while also identifying the rights that did not belong to them, and the conditions under which their registration could be cancelled. It is worth reiterating that while defining eligibility and what constituted Indian origin, the Act retained the contexts of Partition and the excision of those who had become Pakistani citizens (and later Bangladeshis).

IDENTIFYING THE LEGAL CITIZEN

If one looks at the constitutional provisions pertaining to citizenship, keeping in mind the fact that they were addressing the immediate contexts of partition, one is struck by what appears to be an inclusive approach to citizenship, its non-denominational character, and an emphasis on people's choices. Valerian Rodrigues (2008: 166–7),

[4] The Act provided that the Central government could, on application, register any person of Indian origin as an OCI if that person was from a country which allowed dual citizenship. A PIO was, in turn, a citizen of another country who (1) was a citizen of India on 26 January 1950 or at any time thereafter; (2) was eligible to become a citizen of India on 26 January 1950; (3) belonged to a territory that became part of India after 15 August 1947; (4) is the child or grandchild of a person described above; and (5) has never been a citizen of Pakistan or Bangladesh. Overseas Indian Citizenship does not entitle people who have acquired foreign nationality to retain their Indian passports.

for example, indicates the inclusive and generous approach towards citizenship which qualified territorial location and stressed upon associational belonging. Rodrigues (ibid.: 167–8) argues that while the ascriptive identity of a person in terms of territory and culture was seen as important for citizenship, a person was not reduced to her/his ascriptive location. Rather, s/he was perceived as someone who, in important respects, had the ability to make choices concerning herself/himself and her/his future and a free and fair society had to consider such choices with the necessary weight for the entitlements due to her/him. Citizenship, moreover, at its inception, was not confined to the offspring of people found within the territorial bounds of India alone. This, Rodrigues argues, was a bold and generous provision in 1948 as the vast majority of people to whom such recognition was accorded were indentured labourers and poor emigrants. Yet, as mentioned at the beginning of this chapter, in the intervening period between the enforcement of the citizenship provisions of the Constitution and the Citizenship Act of 1955 and the Rules of 1956, the element of choice and voluntariness, which was included as a legal possibility for people moving across borders, was fraught with uncertainty and remained indeterminate. It is interesting how this indeterminacy made itself manifest, especially in relation to women and religious 'minority'. Significantly, the way in which citizenship was determined in both these cases threw up new categories, for example, 'alien women' and 'displaced persons', among others, which were not covered in the language of the law. The 'abducted women', on the other hand, was a legally constituted category, which framed the differential terms of inclusion of women in the new nation-state. All these categories manifest the complex ways in which state practices generated new modes of governmentality through active intervention in national codes of citizenship. Amidst the violence of the law and the centrality the recovery operation came to have in the Indo-Pakistan conferences at the inception of the two nation-states, women became central to the political identity of citizenship.

The deliberations among the officials on citizenship matters and the orders and judgments issued by the courts in contested cases show that these categories were enframed by the problems of fixing the temporal and spatial boundaries of the nation-state and the precise contours of legal citizenship emanating from it. It is not surprising, then, that the process of 'fixing' identity involved a politics of identification—a process of sifting, selecting, and relocating—which reflected the contexts of the emergence of the nation-state. In many ways, determining citizenship

at the commencement of the Republic became a question of territorial location and claims of 'belonging' to the territory. The contours of the contests over these claims were framed primarily in relationship to territorial ties defined in a way which moved closer to ethnic-cultural relationships rather than civic-political association. Most importantly, the contest drew into its vortex what had been seen as 'settled' in the Constitution—that is, the aspects of voluntariness and choice in citizenship. Furthermore, one provision which may be seen as having a lasting implication for the way citizenship in the nation-state was to be defined, despite the scope for choice/changing one's decision to migrate and returning to India, was the finality with which the excision from citizenship was laid down in the Constitution for those who had 'chosen' not to become citizens of the new nation-state of India and had migrated to Pakistan after 1 March 1947. This excision, and the associated interpretation of voluntariness and choice, was to figure later in disputed cases under the Citizenship Act of 1955. This 'original' excision would also resonate later in the manner in which the scope of the Overseas Citizenship of India was to be determined from 2003 onwards.[5]

Recovering and Relocating 'Abducted Women' as Citizens

The creation of India and Pakistan was accompanied by an unprecedented movement of people across borders and collective violence of an extraordinary nature, including rape, abduction, and killing of women. The Partition was followed by the governments of India and Pakistan conferring and putting in place mutually agreed upon procedures for the recovery, reclamation, and restoration of their 'lunatics', 'prisoners', 'women', and 'children'. The Inter-Dominion Conference instituted procedures to recover, in particular, abducted women and children. Ordinances to make these procedures effective were promulgated in India and Pakistan in January 1948 and May 1948, respectively, followed up by periodical conferences between the two countries to facilitate the recovery and restoration of women who had been abducted in the

[5] The Citizenship (Amendment) Act of 2003 introduced a version of dual/transnational citizenship for PIOs residing in specified countries of Europe and North America, who had migrated from India after 1950, in the form of 'Overseas Indian Citizenship'. Through a further amendment in 2005, the Act allowed the scheme to cover PIOs in other countries as well, excluding Bangladesh and Pakistan. The last chapter of this work carries a detailed discussion of overseas citizenship of India.

course of Partition.[6] The Abducted Persons (Recovery and Restoration) Act was passed by the Constituent Assembly of India on 15 December 1949, which remained in force for eight years until 1957.

As an impressive body of scholarly literature on Partition has shown, women were subjected to successive markings of 'difference as closure' even as the nation made a transition into liberatory encompassing/ universal citizenship. Physical violence on women's bodies and forceful impregnation affirmed the way women's bodies became an allegory for the nation and its boundaries, and a gruesome reminder of the gendered ways in which the politics of place-making unfolds. A historian of Partition recalls, '[After independence] the Governments of India and Pakistan came to an agreement that any [abducted] girl [of any community] should be *forcibly recovered* and returned to her relatives and, until such time as her relatives remain untraced, to the Government [of her country]' ([emphasis added] Qidwai 1990: 151). If the rampant rape, abduction, and killing of women in the course of Partition marked women as the 'other' in the national space, their subsequent recovery and restoration into their 'own' national space reinforced their otherness; for the nation reclaimed them not as citizens but as Hindu (or Sikh) women who had to be restored 'to their original homes'. Significantly, however, as Urvashi Butalia has put it, 'the notion of the home, and indeed the space of home had changed. No longer was it the boundary of the domestic that defined home; rather it was the boundary of the nation' (Butalia 2006: 139). The Hindu and Sikh women who were recovered from Pakistan to be restored to the 'nation' and to their 'homes' were differently positioned from Muslim women who, as 'recovered abducted women', were 'taken into custody' and placed in detention camps in India under what may be called a 'state of exception' till the time their own government claimed them. For the purpose of the Abducted Persons (Recovery and Restoration) Act, 'Muslim abducted persons' constituted a distinct class, and the Act extended only to some states—United Provinces, Provinces of East Punjab and Delhi, Patiala and East Punjab States Union, and the United States of Rajasthan. It was through what constituted an exception—the *suspension* of the writ of habeas corpus—in these detention camps, as Pratiksha Baxi has put it, that notions of 'national honour' were instituted through law: 'Muslim women who had been "recovered" and sent to camps were constituted as *impure* body populations who had no claims to Indian citizenship, and no man or his family could claim that these women had been unlawfully detained in the camps, unlike routine law' (Baxi 2009: 8).

The codes of honour within nationhood played out on the bodies of women, which 'became a sign through which men communicated with each other' (Das 1995: 56).[7] These codes were articulated and enforced through the state, which put in place legal procedures for sifting, identifying, rescuing, and repossessing those women who were left behind with the help of modern technologies of rule and governmentality with the collection of statistics of identification, recovery, and restoration becoming integral to the operation.[8] As pointed out by Veena Das, by creating a new legal category, 'abducted person', the state brought 'such women squarely within the disciplinary power of the state' and at the same time made the 'official kinship norms of purity and honour much more rigid by transforming them into the law of the state' (ibid.: 67).

Accordingly, an 'abducted person' under The Abducted Persons (Recovery and Restoration) Act meant,

> a male child under the age of sixteen years or a female of whatever age who is, or immediately before the first day of March 1947, was a Muslim and who, on or after that day and before the first day of January 1949, has become separated from his or her family and is found to be living with or under the control of any other individual or family, and in the latter case includes a child born to any such female after the said date.

[6] Other measures included the Military Evacuation Organisation, and the Organisation for the Recovery of Abducted Women, consisting of social workers and other officials. Mridula Sarabhai, Rameshwari Nehru, and Kamlabehn Patel were prominent among them.

[7] The masculinist discourse of securing the women is evident from the public statements and debates in the Constituent Assembly. As one MP put it: 'If there is one sore point or distressful fact to which we cannot be reconciled under any circumstances, it is the question of abduction, and non-restoration of Hindu women. We all know our history, of what happened in the time of Shri Ram when Sita was abducted. Here, where thousands of girls are concerned, we cannot forget this. We can forget all the properties, we can forget every other thing but this cannot be forgotten . . . As descendants of Ram we have to bring back every Sita that is alive' (Menon and Bhasin 1990: 6).

[8] The Government of India had set up a Fact Finding Organisation on the communal violence, killings, abductions, and recovery. The Military Evacuation Organization in-charge of the evacuation of minorities also kept track of the figures. In the Constituent Assembly debates on 15 December 1949, it was reported that 33,000 Hindu and Sikh women had been abducted by Muslims and that the Pakistan government claimed that 50,000 Muslim women had been abducted by Hindu and Sikh men. In India, 12,000 Muslim women had been recovered compared to the recovery of 6,000 Hindu women in Pakistan (Das 1995: 59).

It is interesting how these categories clubbed together for recovery were in some sense infantalized, seen as either incapable of independence or unsuited for it, requiring in both cases, custodial care of the family or institutions of the state set up for the purpose. Thus, Section 3 of the Act authorized the provincial governments to set up camps 'for the reception and detention of abducted persons'. Section 4 gave special powers to police officers, especially authorized by the provincial government if he 'has reason to believe that an abducted person resides or is to be found in any place' to 'enter and search the place [without warrant] and take into custody any person found therein who, in his opinion, is an abducted person', and 'deliver' the person 'to the custody of the officer in charge of the nearest camp with the least possible delay'. The police officer could, if he wanted, take the 'assistance of such female persons as may, in his opinion, be necessary for the effective exercise of such power'. Section 6 of the Abducted Persons Act provided for a tribunal which was to be constituted by the Central government to decide on any question 'on whether or not a person detained in a camp is or is not an abducted person', or 'whether or not such a person should be restored to his or her relatives or handed over to any person or conveyed out of India or allowed to leave the camp'.

While it would appear that the identification of abducted women and their recovery and restoration was something which would be natural and desired by women and could, therefore, be effected without force, a close reading of the Abducted Persons Act shows that it prescribed a process of recovery and restoration where application of force was implicit. Yet, since the abducted person was 'under the control' of another person, and herself quite helpless against her abductor, she was to be recovered 'without any concessions', and was to be 'forcibly evacuated' (Butalia 1997: 120). What immediately strikes a discordant note in these provisions is how the recovered abducted [Muslim] woman, comes across as an 'aggressor', to be 'taken into custody' and 'detained' in a camp, divested of ordinary legal rights including appeal to courts and right to legal personhood. While the mere 'belief' of the police officer authorized under the Act to carry out the recovery and its 'recording' was sufficient for the operation to take place, the 'choice' of the abducted woman never figured as a matter for consideration. Literature points out the 'mistakes' that were made in the process of identification (Pandey 2001: 167), and a number of studies have shown that the process was not altogether undisputed, with some of these matters coming up before the courts. In these cases, issues of border-crossings, the element of choice and/or coercion, nationality, citizenship rights, rights of residence, and property rights, became crucial (Butalia 2006: 143–4), as the courts examined women's detentions against a range of standards including those of procedural and substantive justice, legality, and constitutional validity.

Feminist writings have interrogated the recovery of abducted women, the legal regime which facilitated it, and notions of state and national sovereignty which stressed its indispensability. While the two governments had resolved to restore women to their homes, and refused to recognize thereby the 'forced marriages' that had taken place in the course of this period, studies have shown that the long period that lapsed between abduction and recovery, and in some cases where women were left behind in the protection of a known family, made the process of recovery more complex than the law made it out to be (Das [1995]; Menon and Bhasin [1993]; and Butalia [2006]). With reference to the well-known case of *State of Punjab* v. *Ajaib Singh and Another* (1952), for example, Urvashi Butalia has shown that some among the 'recovered' abducted women refused to return to their 'own' families and expressed the wish to stay on with their abductors (ibid.: 144). In cases where there were children 'born out of "wrong" sexual unions' (Das 1995: 73), the question of legal recognition and custody became contentious. Das refers to the narratives collected by her as well as to the 'memories of social work' by Kamlabehn Patel, who actively participated in the recovery operation. Patel wrote not only of men's cruelty towards women, but also of the coercive practices of the state in the recovery of abducted women (ibid.: 76–7). Indeed, the identification and separation of the 'illegitimate' from the legal citizens became for the state a mode through which it allied tactically with the 'order of the family', helping it to 'preserve its honour and reputation' whereby the 'surfaces' of the state absorbed its undesirable members by bringing them under its direct disciplinary control. Yet, the alliance was more complex and the interests of the family and those of the state were often uneven, inconsistent, and conflicting. This was most evident in cases where community practices 'were geared towards absorbing women and children within the structures of the family and marriage to diminish their visibility', rather than distilling them out as undesirable outsiders (ibid.: 82). When these inconsistencies came before the courts, it was the order of the state which enforced the resolution and determined the terms of excision, even as the 'order of the family' placed contending claims to absorption.

In *State of Punjab* v. *Ajaib Singh and Another*, for example, the questions which occupied the attention of the judges and assumed crucial importance in the judgement concerned the fundamental rights of citizens against unlawful arrest and the unconstitutionality, therefore, of the Abducted Persons (Recovery and Restoration) Act.[9] This was perhaps the critical reason why the case could break free from the legal foreclosure prescribed by the Act, allowing the case to be argued before both the High Court and the Supreme Court. The details of the case as brought out in the Supreme Court judgement were as follows: On 17 February 1951, Major Babu Singh, Officer Commanding No. 2 Field Company, S.M. Faridkot, reported that Ajaib Singh had three abducted persons in his 'possession'. On 22 June, the recovery police of Ferozepore raided Ajaib Singh's house in village Shersingwalla and took a 12-year-old girl, Musammat Sardaran, into custody and delivered her to the custody of the Officer-in-charge of the Muslim Transit Camp at Ferozepore. Musammat Sardaran was later transferred to the Recovered Muslim Women's Camp in Jullundur City. Nibar Dutt Sharma, a Sub-Inspector of Police, was deputed by the Superintendent of Police, Recovery, Jullundur to make enquiries into the facts of the case. On 5 October 1951, the Sub-Inspector reported that the girl had indeed been abducted by Ajaib Singh during the riots of 1947. On 5 November 1951, the petitioner filed a habeas corpus petition and obtained an interim order that the girl should not be removed from Jullundur until the disposal of the petition. The case of the girl was then enquired into by two Deputy Superintendents of Police, one from India and the other from Pakistan who, after taking into consideration the report of the Sub-Inspector and the statements made before them by the girl, her mother, who appeared before them while the enquiry was in progress, and Babu alias Ghulam Rasul, the girl's uncle, came to the conclusion that the girl was an abducted person as defined in Section 2(a) (1) of the Abducted Persons (Recovery and Restoration) Act LXV of 1949. They recommended that Musammat Sardaran should be sent to Pakistan 'for restoration to her next of kin'. This restoration was to be kept in abeyance till the final decision of the High Court in Ajaib Singh's appeal. In the meantime, the Tribunal set up under Section 6 of the Act, consisting of two Superintendents of police, one each from India and Pakistan, gave its decision agreeing with the findings and recommendation of the two Deputy Superintendents of Police and directed that the girl should be sent to Pakistan and restored to her next of kin there. On 26 November 1951, the habeas corpus petition came up for hearing before Justices Bhandari and Khosla, who referred it to the Full Bench of the Supreme Court.

[9] *State of Punjab* v. *Ajaib Singh and Another*, judgment delivered on 10 November 1952 by the Supreme Court bench comprising Justices Sudhi Ranjan Das, M. Patanjali Sastri, B.K. Mukherjea, Vivian Bose, and N.H. Bhagwati, AIR 10 1953 SCR 254.

It is interesting that the grounds on which competing claims were made by Ajaib Singh and the government of Punjab over the 'custody' of Musammat Sardaran inadvertently drew the Supreme Court and the political executive/government into the contest. As the custodian of the fundamental rights of citizens in the Constitution of India which had come into force recently, the Supreme Court was pitted against the 'competence' of the political executive to legislate and take decisions on matters which inevitably had ramifications for citizen's rights. On the other hand, the legal regulation of recovery and restoration of abducted women pertained to far more serious matters concerning the 'nation', which gave it the legitimacy which notionally (and in practice) predated the Constitution. Indeed, this inviolability of the context was recognized by the judges in their recreation of the trajectory of events which led to the enactment of the Abducted Persons Act. The judgment, delivered on 10 November 1952, mentioned the 'heart rending' tales of Partition, and the worth of the Act as a 'beneficial legislation':

> It is now a matter of history that serious riots of virulent intensity broke out in India and Pakistan in the wake of the Partition of August, 1947, resulting in a colossal mass exodus of Muslims from India to Pakistan and of Hindus and Sikhs from Pakistan to India. There were heart-rending tales of abduction of women and children on both sides of the border which the governments of the two Dominions could not possibly ignore or overlook. As it was not possible to deal with and control the situation by the ordinary laws the two governments had to devise ways and means to check the evil . . . (Ajaib Singh case, paragraph 6).

Importantly, however, rather than the 'grammar' of the nation, the judges pitched their final arguments within the framework of legal-constitutionalism, reclaiming the space of citizenship which the extraordinary measures precluded:

> That the Act is a piece of beneficial legislation and has served a useful purpose cannot be denied, for up to February 29, 1952, 7,981 abducted persons were recovered in Pakistan and 16,168 in India. This circumstance, however, can have no bearing on the constitutionality of the Act which will have to be judged on purely legal considerations.... (ibid.)

While examining the consistency of the Act with the Constitution, both the High Court of Punjab and the Supreme Court came to the conclusion that the Central Recovery Tribunal was subject to the jurisdiction of the high courts, and that recovered persons were entitled to the protection provided by Article 22 of the Constitution, which lays down procedures pertaining specifically to arrests, detention, and loss of personal liberty. More significant, however, was the deliberation within the judgment on whether marking out Muslims as a specially defined class for the purpose of the Act amounted to religious discrimination and whether a case could be made against the state of having 'discriminated against abducted persons who happen to be citizens of India on the ground of religion alone'. Interestingly, however, nowhere does the judgment bring into consideration, and reveal thereby, whether Musammat Sardaran had exhibited any personal choice in the contest over her custody. Musammat Sardaran is an absent referent in the entire judgment, so that while the specific circumstances of her 'case' are submerged in the general pattern of abductions following Partition, it is the Act and the Constitution which are eventually foregrounded. Thus, Musammat is 'set at liberty' not because the judges believed that *she* wanted it, but because they found procedural flaws in the manner in which the Tribunal was constituted, ventured to bring it within the jurisdiction of the High Court, and set out to restore the fundamental rights of Musammat Sardaran on the assumption that despite her 'recovery', it could not be conclusively said that she was not a citizen of India. Significantly, while 'detained' under the Act, Sardaran was under a state of suspended citizenship, with no personal liberties. The Supreme Court restored Sardaran to citizenship, ironically, by turning her detention into an 'arrest' and ordered her 'release on bail'. Thus, her transition from a detainee non-citizen divested of any rights under the Act to a citizen involved a subtle process of criminalization.

In *Smt Bimla Devi* v. *Chaturvedi and Others*, a criminal case which came before the High Court of Allahabad and was decided on 12 March 1953, Bimla Devi petitioned the High Court for the issue of a writ directing the removal of police guards from her house, to prevent them from 'interfering with her liberty', and 'from arresting or removing [her] to any camp' (AIR 1953 All613). Bimla Devi, formerly a Muslim by the name of Razia Khatoon, appealed to the Supreme Court for the protection of her rights as a citizen of India. Married earlier to Bidayatullah Butt of Nangal in Saharanpur, who migrated to Pakistan in the wake of Partition, leaving her behind, Razia became an Arya Samaji and married Bagh Shah Khatri on 17 July 1947. Contradicting Bimla's petition, the other parties in opposition, including Sub-Inspector Chaturvedi and Razia's husband's (Butt's) relatives, argued that she was, in fact, abducted from a medical college in Ludhiana in June 1947. At the time of her abduction, she had two children, a four-year-old daughter, and a 10-month-old son who died in December 1950. When Butt made claims to Razia's recovery, through a privately negotiated settlement only her daughter was returned in December 1950. His other relatives, however, pressed for Razia's restoration. A year later, in December 1951, Sub-Inspector Chaturvedi 'arrested' the applicant [Bimla alias Razia] in her house. Since Bimla was in an advanced state of pregnancy, she could not be removed to a detention camp and was placed under house arrest.

The appellant challenged the validity of the Abducted Persons Act, stating that the dominion legislature which enacted it 'had no legislative competence to do so', and also because 'it contravened Clauses (d), (e), and (g) of Article 19(1) of the Constitution of India'.[10] It is significant that the appellant's case was couched in the civic idiom of citizenship, deriving in particular from the right to freedom guaranteed by the Constitution as distinct from the Ajaib Singh case, where the appellant prioritized protection of personal life and liberty. Quite like the judgment in the Ajaib Singh case, however, here too the judges did not question the legislative competence of the dominion legislature, nor did they agree that the Act was inconsistent with the Constitution. Like the Supreme Court, they upheld the procedure of recovery and restoration instituted under the Act, including the authority of the Tribunal to decide on the matter primarily because in their opinion 'It was inconceivable that the tribunal will order the restoration and removal out of India of an Indian-citizen against his or her true wishes' (Judgment, 1953, paragraph 14) The judges, moreover, did not construe 'recovery' and 'restoration' as coercive measures which violated constitutional freedoms and deprived persons of their legal citizenship. Stating that the only purpose of the Act was to 'restore abducted persons to their relatives whether in India

[10] Article 19 of the Constitution of India guarantees the fundamental freedom of speech and expression, stating that all citizens of India shall have the right under 19(1): (1) to freedom of speech and expression, (2) to assemble peacefully and without arms, (3) to form associations or unions, (4) to move freely throughout the territory of India, (5) to reside and settle in any part of the territory of India, and (6) to practice any profession or to carry on any occupation, trade or business.

or in Pakistan' (ibid.), the judges placed restoration within a framework of arguments, which made it appear as something to which there would be a natural predisposition, making force and coercion redundant and, thereby, invisible as an actually existing component of the process. The idea that restoration was, in fact, a freely exercised, non-coercive act of volition, informed the distinction the judges drew between restoration and deportation. This led on to the position that 'conveyance out of India' was 'not at all tantamount to deportation', and there was nothing which prevented a person restored 'to return to India and enjoy all rights which the Constitution guarantees to a citizen'. Importantly, the argument went, 'an Indian citizen does not cease to be an Indian citizen, unless he or she of his or her free will wishes to give up that status. He or she is conveyed out of India, not on account of prohibition to reside in India but only for the purpose of restoring him or her to his or her relations' (ibid., paragraph 15). Evidently, in the consideration of the court, recovery and restoration operations being conducted on both sides of the border were liberatory for women and the procedures that were incorporated in the Act, including arrest and detention, were non-coercive. Indeed, irrespective of the claims that were made on the 'abducted' woman from her families on both sides of the border, the woman was seen as free to make the choice of returning and reclaiming her citizenship. On the face of it, therefore, legally the abducted woman was seen as an Indian citizen, a status she could give up or reclaim of her individual free will. Yet, in order for her to be able to reclaim the status of a citizen, the woman had to be first restored, in accordance with the obligation that the two countries had entered into, agreeing as the Preamble of the Act stated, to recover and restore abducted persons. Accordingly, the Allahabad High Court dismissed the petition of Bimla Devi (alias Razia).

In yet another case, Ram Singh petitioned the High Court of Punjab for the release of Bachan Kaur (alias Rusmat) and his four children from the Muslim Camp in Jullandhar (*Ram Singh Narain Singh* v. *Union of India and Others* 1953); Ram Singh argued that Bachan Kaur had eloped with him long before the 1947 'disturbances', and had embraced Sikihism. Her previous husband being dead, she had married Ram Singh and was living with him for the past 10 years before she was arrested by the police on 21 May 1953 and taken to the Muslim camp along with their four children. An affidavit made by Mridula Sarabhai denied the claim and stated that Bachan Kaur, who was a Muslim woman originally called Rusmat, was, in fact, abducted a month before the breaking

out of disturbances in 1947 and had rightfully been taken away by the recovery police. The Tribunal held that Rusmat and her four children were, in fact, abducted persons under the provision of the Act and that Rusmat had agreed to be restored to her family in Pakistan along with her eldest and youngest sons, leaving the other two with Ram Singh. In his petition to the court, Ram Singh asked for a writ of habeas corpus, permission to interview Bachan Kaur, and the custody of his four children (AIR 1954 PH 145 1954 CriLJ 1056).

In an allied case, discussed in the course of the above judgment, Amar Kaur, originally called Jiwan, was living with Pritam Singh before she was arrested and detained in a camp with her two sons. Pritam Singh claimed that Amar Kaur had left her former husband six years before Partition and had since embraced Sikhism and married him. The Tribunal decided that Amar Kaur was an abducted person who had 'expressed her willingness' to go to Pakistan with her sister and her two sons. In both these cases, the petitioners stated that the procedures of decision making employed by the Tribunal set up under the Act, with extraordinary self-regulatory powers, violated principles of natural justice by denying them an opportunity to examine witnesses, as well as the chance to interview their wives. In both these cases, the court decided that the denial of cross-examination of witnesses did not constitute any denial of justice. As for the 'right of the petitioners to interview their respective and alleged wives', such a right was non-existent once it was decided by the Tribunal that the women were abducted women:

> as in the present two cases it has been held that the persons detained are abducted persons the petitioner can have no right of interviewing them, and it is not necessary to decide in this case as to what would be the position before the adjudication by the Tribunal as to whether a person detained is or is not an abducted person. (*Ram Singh Narain Singh* case, paragraph 32)

With the passage of time, while queries regarding abducted women continued to be made and addressed by the High Commissions and Ministry of External Affairs of the two countries, there was reticence in acknowledging the existence of such cases of 'mis-location'. In a letter dated 3 December 1964, for example, the High Commissioner for Pakistan in India sent the following query:

> The High Commission for Pakistan in India presents its compliments to the Ministry of External Affairs, Government of India, and has the honour to inform them that a Muslim girl Safia, now named Raksha, sister of Manjoor

Muhammed Khan, resident of B/63 Naya Mohalla, Rawalpindi was abducted at Patiala at the time of Partition. The High Commission has reason to believe that she is now living in the household of one Harbans Singh who was employed as a motor car driver of the Deputy Commissioner . . . .

The District Magistrate responded to the query on 18 August 1967:

In this connection I am to inform you that confidential and discreet enquiries have been conducted which reveal that Harbans Singh, driver of this office, was married about 10–11 years ago to the daughter of one Ujjwagar Ram . . . the name of this lady is Raksha Devi and she has four issues . . . the statement of Raksha Devi was also recorded by an Executive Magistrate 1st class. In her statement she has denied any relation with Shri Mansur [sic] Muhammed, and has expressed her complete ignorance about him. She has stated that she was married to Harbans Singh about 11–12 years ago and that she was now mother of four children . . . .

In another such instance, the High Commissioner of Pakistan wrote to the Ministry of External Affairs, in a letter dated 12 December 1964, that:

one Mr. Arshad Ali has reported that during the wake of disturbances in 1947 the following five girls were abducted from Bawal (Nabha state): Sarwari, Bilquis, Jamila, Haseena, and Rabia . . . . An Indian national of Alwar has now informed Mr. Arshad Ali that about a dozen displaced ladies were brought to Alwar by Mr. Manoo of Punjab state for the purpose of sale. But he was caught by police and all the ladies were sent to Ambala Camp on 15-7-1960. It is reported that among those ladies, there were aforesaid five girls. . . .

The Ministry, on its part, reported to the High Commission on 5 June 1965 that although proper enquiries had been made, no useful information regarding the five abducted girls could be gathered, concluding that 'the information said to have been supplied by an Indian national to Mr Arshad Ali is obviously incorrect'.

On the one hand, the question of these women's authenticity as citizens—as actually belonging to places where they are found—as in the case of Raksha and the five missing women who were allegedly 'dislocated' and needed to be found and relocated, complicated the question of choice, and in particular women's choice. But, on the other hand, the question of voluntariness—as in the voluntary acquisition of Pakistani citizenship—which was put down as a primary condition of loss of Indian citizenship in the Constitution, was never actually put to debate and judicial scrutiny and decision, except in the case of minors.

It is interesting how the significance of voluntary choice emerges in a particular case where Mangal alias Maphul (son of Jumen) killed his wife Ghafoori, who was in an advanced state of pregnancy, with a *gandasa*, 'probably' because she refused to accompany him to Pakistan. Maphul was tried for murder and sentenced to death for the offence on 30 December 1948 by the Sessions Judge of Rohtak. His appeal to the East Punjab High Court was rejected and Maphul then submitted a mercy petition, which was also rejected by the Governor General. The order of the Governor General rejecting the petition was conveyed to the Government of East Punjab on 17 October 1949. Meanwhile, the exchange of Prisoners Act was passed. It appears that Maphul had embraced Hinduism in 1946 and was therefore, not 'exchangeable' under the Inter-Dominion Agreement between India and Pakistan. The government of Punjab addressed the issue to the Ministry of Home Affairs (MHA) in the Government of India. On 26 November 1949, the MHA ordered the postponement of Maphul's execution. The case had been pending ever since—for six years and four months since the death sentence was passed upon him. The Ministry of Home Affairs (MHA) received three telegrams from the Government of India, asking for a stay on execution on the ground that prisoner Mangal alias Maphul was an exchangeable prisoner.

The exchange of prisoners legislation was passed in 1948 and, subsequently, two exchanges of prisoners took place during April 1948 and October/November 1948—4,084 non-Muslims were transferred to India and 3,763 Muslims were transferred to Pakistan. In 1949, supplementary exchange of prisoners took place and Maphul was not 'exhanged' because his case remained a 'doubtful' one. In 1950, however, his execution was stayed and he was categorized as a 'transferable' prisoner. On 8 May 1955, the MHA was instructed by the Ministry of Rehabilitation to 'kindly see' the case, after which the Ministry informed Pakistani authorities that they were agreeable to transferring him (File no. 32/82/55 Judl, NAI [Subject Petition for mercy from Maphul s/o Jumen sentenced to death on 30 December 1948]).

MIGRATION AND CONSTITUTIONAL PROVISIONS, VOLUNTARINESS, AND INTENTION

The provisions of the Constitution of India, particularly Articles 5, 6, and 7, dealt with the question of citizenship at the commencement of the Constitution. Article 5 conferred Indian citizenship on every person who, at the commencement of the Constitution, had his domicile in the territory of India and (1) who was born in the territory of India; or

(2) either of whose parents was born in the territory of India; or (3) who had been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement.

Articles 6 and 7 concerned themselves with the contentious question of the rights of citizenship of persons who 'migrated' to India from Pakistan (Article 6) or to Pakistan from India (Article 7). A close reading of the provisions of Articles 6 and 7 shows that they threw up two dates—1 March 1947 and 19 July 1948—which constituted the temporal boundaries of migration as far as Indian citizenship was concerned. Constitutional provisions laid down in precise terms the dates within which, and the procedure whereby, 'movement' across borders may confer citizenship. But, the unfolding of the provisions in the years after independence showed a contest around questions of intention and choice, which came to play a determining role in ascertaining legal citizenship. It is important to detail the provisions of the two Articles in the text for clarity in the arguments that follow:

Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan—Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if— (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Article 7: Rights of citizenship of certain migrants to Pakistan—Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India: Provided that nothing in this Article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

One of the cases where the interpretation of migration, as contained in the two Articles, became imperative, came up for consideration before the MHA in January 1958. A person born in Quetta in West Pakistan came to India, the official files mention, 'with a view to carrying on money-lending business' (Letter dated 31 January 1958 by the Joint Secretary in the Ministry of Home Affairs; File no. 2/4/58 MHA-IC, NAI). This person claimed to be an Indian citizen under the provisions of Article 6(b)(i) of the Constitution 'on the ground that he migrated to India before the 19th day of July 1948 and has ordinarily been resident in India since the date of his migration' (ibid.). The Home Ministry subsequently sought legal opinion on what the word 'migrated' used in Article 6 (b)(i) of the Constitution meant—'Does it signify that the person's intention must have been to permanently settle down in India at the time of his so-called migration' and '... can a migration have taken place for the purposes of the Article even before the Partition of India i.e. from a date prior to the 15th August 1947' (ibid.).

The response of the Law Ministry revealed that while the expression 'migrated' as it occurred in Article 7 of the Constitution had come up for the consideration of various high courts, Article 6 had not so far come up for 'judicial notice' (Letter dated 3 February from the Ministry of Law: 2, ibid.). Moreover, in cases where Article 7 became crucial, it was interpreted differently. In one case, for example, the Judicial Commissioner of Kutch had argued that 'migration had no reference to domicile and simply meant, as in Article 7, departure from India to Pakistan for "the purpose of residence, employment or labour", and a person who went to Pakistan for a living ought to be regarded as having migrated to Pakistan even though he had no intention of giving up Indian domicile' (AIR 1951 Kutch 38). The note from the Law Ministry explained that the Allahabad High Court had concurred with this view of migration to Pakistan, excluding only those who were covered under the provisions of Article 7, who, after having migrated to Pakistan, returned to India under a permit for resettlement or permanent return. The Law Ministry found 'great force' in the view propounded by the Allahabad High Court that migration should be associated with the intention for settlement or permanent movement. The Allahabad High Court (AIR 1951 Allahabad 16), as reported by the Ministry's note stated that the expression 'migration' embraced in scope two conceptions: first, going from one place to another and, second, the intention of making the destination a place of abode or residence in future. The court also held that in the context of the Constitutional provisions, the expression had

further connotations of 'transference of allegiance from the country of departure to the country of adoption'. This line of reasoning adopted by the court, where migration was invariably a purposive movement intended for changing abode and transferring allegiance, was reflected in a subsequent decision of the Allahabad High Court given in 1952, which averred that 'migration should be of such a nature that the person migrating would lose his citizenship of the country from which he migrated'. In an unreported case (*Sheikh Tyab Ali* v. *The State of Bombay* ibid.: 3) referred to in the Allahabad High Court's decision of 1952, the High Court of Bombay gave a different interpretation of migration. Both interpretations, however, led to the same conclusion of loss of citizenship due to migration:

> The expression 'migrated from the territory of India' does not mean leaving India only with the intention either of not returning to India or of settling down permanently outside India ... the expression 'migrated from the territory of India' must in its context mean voluntary departure from the territory of India, the departure being not casual or fortuitous but with the intention of carrying on the normal avocation outside India. In this view a person going from one country to another for the purpose of carrying on business for indefinite duration will have to be deemed to have migrated (ibid.).

The Patna High Court (AIR 1953 Patna 112) followed the Allahabad High Court's view and observed that the word 'migration' definitely suggests an element of permanent change of residence and not merely movement from one place to another. The Patna High Court considered that movement must be with a view to settle down in the other country so as to affect the migrant's right to citizenship in the country from which he had migrated. The full bench of the Saurashtra High Court held (AIR 1953 Saurashtra 37) that persons who had gone over to Pakistan on a temporary permit and overstayed the period of permit without any adequate reason must be deemed to have migrated to Pakistan. In AIR 1954 Bhopal 9, the Judicial Commissioner of Bhopal, following the Allahabad High Court's view, construed migration in the sense of departure from one country to another with the intention of residence or settlement in the other country and held that a temporary visit to another country on business or otherwise cannot amount to migration. Significantly, the Law Ministry's advice to the Home Ministry on the case of the returnee from Quetta deviated from the literal interpretations of migration offered by various high courts to examine it as 'movement consequent upon political changes in the country and disturbances arising therefrom', and concluded that 'only those persons who were uprooted in the wake of those changes and disturbances ought properly to be regarded as having migrated from Pakistan to India and vice versa' (ibid.). Differing from the Allahabad High Court, it argued that 'the intention' to settle in one country or another may not have been 'necessarily present' at the time of the movement in the minds of those who moved from one country to another, particularly, at a time when such movement was due to 'panic and fear' (ibid.: 5). It was 'possible to imagine', it argued, that 'a Muslim owing allegiance to India, out of fear, temporarily moved to Pakistan and vice versa' (ibid.). For the Ministry, 'in determining whether a person migrated from one Dominion to the other within the meaning of the Constitution' it was not just the fact of the initial movement, but also the 'subsequent conduct of the person concerned', which will have to be considered (ibid.). 'Allegiance', which the Allahabad High Court presented as a concern in the Constitution, would be deciphered only from his subsequent conduct. The Ministry opened, thereby, different possibilities for movements before, during, and after Partition:

> It is possible to imagine cases of persons who came over or went away from the territories which are now India on business long time before the partition of the country but having regard to the partition they decided to stay on permanently in the country to the territories of which they had gone. To illustrate the position, a Hindu from Karachi who came to India in 1946 for business and settled in India after the partition ought to be regarded as a migrant to India unless his conduct shows that his stay in India is of a temporary nature and his intention is to return to Karachi in due course. The intention to settle down in India would crystallize after the partition although his physical movement was before the partition. (ibid.)

Applying this general principle to the specific case sent for its consideration, the Law Ministry reasoned that the money lender from Quetta came to India before 19 July 1948 for business purposes and seemed to have been residing in India ever since. The crucial consideration, however, would be to establish, on the basis of his 'subsequent conduct', whether his present residence was merely for business or with the intention of settling down in India. The guiding principles for assessing this would be to ascertain 'if he continues to possess property in Pakistan, if he has relations in Pakistan with whom he is in touch, or he has not acquired any property in India even though he has the means to acquire, if he has not assimilated himself in the Indian way of life' (ibid.). In case any of these could be

identified in his conduct, 'he could not be regarded as having settled down in India, and therefore to have migrated to India, in spite of his long continuous residence' (ibid.).

In yet another case which came up before the Supreme Court for its decision, Abdul Khader, born at Adoni in Andhra Pradesh in 1924, went to Pakistan 'towards the end of 1954 or early in 1955', and returned to India on a Pakistani passport, with a visa to stay in India up to 14 April 1955.[11] Khader exceeded the permitted duration of stay in India and requested the Government of India for an extension of his visa till September 1957. In the meantime, the government of Andhra Pradesh served him with an order to leave the country. Khader did not leave as directed in the order and was prosecuted by the state government for breach of order. On the basis of the facts that Khader was in possession of a Pakistani passport and that the Central government had denied him an extension of visa, the Judicial Magistrate concluded that Khader had in fact 'migrated' to Pakistan and having 'disowned Indian nationality he had ceased to be an Indian national' (ibid., para 5). Khader's appeal in the Sessions Court in Kurnool was dismissed but the state High Court admitted his appeal for revision, to overturn which the state government turned to the Supreme Court. The Supreme Court dismissed the state government's appeal, and allowed the revision of the Sessions Court's decision. In doing so, it 're-presented' the case so that it no longer fell within the purview of the Citizenship Act, 1955 and 'within the exclusive jurisdiction of the Central Government to decide' (ibid., para 9). Thus, instead of the question which the lower courts had so far foregrounded—whether Khader having once been an Indian citizen had 'renounced' Indian citizenship for a 'foreign nationality'—the Supreme Court addressed itself to the question of whether or not Khader was an Indian citizen. In the process of addressing this question, the Supreme Court took recourse to the constitutional framework of citizenship to consider Khader's claims to citizenship of India by birth. Most significantly, it revisited the question of 'migration' to Pakistan, which the Constitution had addressed, affirming that any 'migration' to Pakistan can be construed to have taken place only before the commencement of the Constitution:

[11] For the details of the case, see *State of Andhra Pradesh* v. *Abdul Khader*, decided in the Supreme Court on 4 April 1961, MANU/SC/0071/1961, accessed on 30 August 2008.

> Though we are upholding the decision of the High Court, we wish to observe that we do not so for reasons mentioned by it. It is unnecessary to discuss those reasons but we would like to point out one thing, namely, that the High Court seems to have been of the opinion that Art. 7 of the Constitution contemplates migration from India to Pakistan even after January 26, 1950. We desire to make it clear that we should not be taken to have accepted or endorsed correctness of this interpretation of Art. 7. The reference in the opening words of Art. 7 to Arts. 5 and 6 taken in conjunction with the fact that both Arts. 5 and 6 are concerned with citizenship (at the commencement of the Constitution) apart from various other considerations would appear to point to the conclusion that the migration referred to in Art. 7 is one before January 26, 1950, and that the contrary construction which the learned Judge has put upon Art. 7 is not justified, but in the view that we have taken of the facts of this case, namely, that the respondent had never migrated to Pakistan, we do not consider it necessary to go into this question more fully or finally pronounce upon it .... (ibid., para 14)

Kulathil Mammu v. *The State of Kerala* (AIR 1614 1966 SCR (3) 706), decided by the Supreme Court on 2 March 1966, was yet another case which opened up for scrutiny the legal meaning of the word 'migrated', especially as it obtained in Article 7 of the Constitution. In this case, the contest was over the citizenship of Aboobacker, on whose behalf a writ petition had been made first in the Kerala High Court and, subsequently, in the Supreme Court. Aboobacker was born on 5 March 1936 in the district of Kozhikode of parents who continued to be Indian citizens after Partition. In 1948, when he was 12 years old, Aboobacker left India and went to Karachi in Pakistan, where he remained till 1954. On 10 March 1954, he obtained a Pakistani passport and returned to Kozhikode on a visa granted to him in September 1954. In his passport, Aboobacker was identified as a Pakistani national, whose approximate date of migration to Pakistan was 1948, and his father was described as an Indian. On 1 November 1954, he left for Pakistan, and returned again in 1956 on a fresh visa. In October 1964, Aboobacker was 'found' living in the district of Kozhikode without any valid travel documents, was arrested, and a case under the Indian Passport Rules, 1950 was registered against him. The state government passed an order on 5 November 1964 under the Foreigners Act asking him to leave India. On 16 November 1964, a writ petition was filed on behalf of Aboobacker in the High Court, contending that Aboobacker was an Indian citizen, a contention which the state government opposed on the ground that Aboobacker ceased to be a citizen of India when the Constitution came into force by virtue of Article 7. The petitioners argued that Article 7 had no application in this case because migration as 'contemplated in that Article must be with

the intention to leave India permanently and settle finally in Pakistan, [which had been the Supreme Court's interpretation of migration in the case *Shanno Devi* v. *Mangal Singh* (AIR 58 1961 SCR(1) 576) decided on 9 September 1960], and that as Aboobacker was a minor at the time he left India could not be imputed with any such intention'. Moreover, the petition pleaded, 'he had simply gone to Karachi in search of livelihood as he was poor'. The state government argued that no such ascription of intention was necessary; migration under Article 7 of the Constitution 'simply meant the physical act of going from India to Pakistan' and any person, whether he was a minor or a major, would be covered by its provisions. The High Court agreed to the state government's position but allowed Aboobacker to petition the Supreme Court. Significantly, the five judges bench of the Supreme Court agreed unanimously that Aboobacker was not an Indian citizen. Yet, there were two judges, who, even as they rejected Aboobacker's claims to citizenship on other grounds, disagreed on the 'broad interpretation' of migration taken by the majority of three judges, according to which mere movement from one place to another would constitute migration. In *Shanno Devi* v. *Mangal Singh* (1960), the claims of Mangal Singh to Indian citizenship and his eligibility for contesting elections were challenged by Shanno Devi, one of the unsuccessful candidates in the Punjab Legislative Assembly elections. While deciding the case, the court deliberated on the question as to 'what constituted migration in the context of Article 6, which dealt with people migrating into India from Pakistan'. Significantly, in this case, the decision in favour of Mangal Singh's claims to citizenship and the legality of his election to the Punjab Legislative Assembly was made possible by 'a narrow interpretation' of migration, under which the 'intention' to reside permanently was seen as inextricably associated with migration. With such an interpretation, the judges construed Mangal Singh's movement from East Pakistan to Jullandhur before Partition as an act of migration, having been done with the intention of becoming a permanent resident of the country. His subsequent movement out of the territory after the commencement of the Constitution was considered irrelevant by the court, while reading this intention in his original act of movement into India. Significantly, while a narrow interpretation of migration attributed legality to Mangal Singh's movement into India, the broad interpretation by the majority of the bench explicitly rejecting the interpretation in Aboobacker's case, construed any movement out of India into Pakistan, with or without the intention of changing abode, as an act of migration, resulting in loss of citizenship.

THE CITIZENSHIP ACT OF 1955 AND DISPUTES OVER CITIZENSHIP

Registered Wives and 'Alien Women'

When the Citizenship Act of 1955 was enacted under Article 11 of the Constitution, the question of citizenship under the new Act threw up 'liminal', 'transitional', and 'awkward' categories of aspiring citizens, whose legal resolution drew attention yet again to the ethno-cultural and gendered basis of citizenship in India. It is significant that determination of citizenship was influenced by the different ways in which the western and eastern borders of India were construed. While the legal freezing of the western border was almost instantaneous and the process of sifting outsiders (Muslim women in Hindu homes in India) and identifying and recovering the dislocated insiders (Hindu/Sikh women in Pakistan) was carried out as a task essential for the consummation of the nation-state, the eastern border remained more or less fluid and the nature of citizenship emerging from this movement remained ambivalent.

Nowhere is this more evident than in the manner in which citizenship of people moving across borders, in the period intervening the deadline set by the Constitution of India and the enactment of the Citizenship Act in 1955, on long term visas—the minority population 'displaced' or 'evacuated' from Pakistan and the Pakistani wives of Indian nationals who needed to be registered as Indian citizens after the enactment of the 1955 Act—was resolved. Thus, if the congealing of the western border and legal resolution of the citizenship question threw up 'awkward' citizens, the eastern border continued to see the flow of people much beyond the constitutional deadline of 19 July 1948, in several continuous and successive waves, leading up to a situation where their presence became 'illegal'.[12]

Liminal categories, as mentioned earlier, included people on long-term visas and entry permits, or the minority (Hindu) population 'displaced' or 'evacuated' from Pakistan and the Pakistani wives of Indian nationals who applied for registration as Indian citizens after the enactment of the 1955 Act. The policy regarding citizenship of [Hindu] minorities 'displaced' from Pakistan in this intervening period seems to have been starkly different when compared to the registration of 'wives' as citizens.

[12] The question of illegality of migrants from across the eastern borders of India along the erstwhile East Pakistan and later Bangladesh has been discussed in the next chapter.

Internal communications reveal a grudging admission of wives into registered citizenship. Thus, even as they filled up forms declaring that they had spent a year in India and their marriage subsisted, and swore on an affidavit their patriotism to India and abdication of Pakistani citizenship, several government departments including the intelligence probed into their background to confirm that they had no files on them. Thus, amidst the numerous communications that went on between different departments in each case, the Deputy Secretary, Home Affairs, while admitting that Sogra Begum, a 19-year-old Pakistani woman and applicant for registration as Indian citizen, was eligible to become one 'as she satisfied all the requisite conditions', proposed: 'If it is considered that a period of two years is too small to assess her loyalty and behavior, we may hold over the consideration of her application for one or two years'. (Noting dated 30 July 1957. File no. 6/27/57, MHA (IC). NAI.)

It is interesting how the 'wives', or Pakistani women marrying Indian nationals, constituted a substantial proportion of women registering as citizens under section 5(1)(c) of the Citizenship Act of 1955. The Pakistani women who travelled to India with their families on short term visas to get married to, or after their marriage with Indian men, occupied the transitional/liminal space between the closure to Indian citizenship for Pakistani citizens which the Constitution prescribed, and its conditional opening up under the Citizenship Act, for women who married Indian men. Among the large numbers of applications for registration as Indian citizens in the 1950s, those by Pakistani women figured in disproportionately large numbers. Interestingly, while the rules for citizenship under the Act did not exclude Pakistani citizens and their applications followed the usual procedure of being 'forwarded and recommended' by a specific state government to the MHA and its scrutiny by the Indian Citizenship (IC) section of the MHA, as mentioned in the case of Sogra Begum, the applications were subjected to minute scrutiny by the Intelligence Bureau (IB) and the Ministry of External Affairs (MEA). Other specific concerns which would have applied to all applicants, and not exclusively to Pakistani women, were the requirement of renunciation of 'original citizenship' under the Citizenship Act, taking 'an oath of allegiance' under the Citizenship Rules of 1956, and the residential requirements prescribed under rule 4(3).

The requirement of renunciation of 'alien nationality' in the case of Pakistani citizens, however, turned out to be a matter of some concern for the MHA officials since under the Pakistan Citizenship Act 1951 there was no provision 'enabling Pakistani citizens to renounce their nationality'. In Sogra Begum's case, who in her application had not mentioned anything against item 10 of the form relating to the 'renunciation of the citizenship of her country in the event of her application being sanctioned', the MHA adopted the following lines of action:

> before actually effecting her registration she can be called upon to renounce her Pakistani citizenship by swearing an affidavit and her application may, therefore, be treated as in order ... (File no. 6/27/57, MHA-IC, NAI: 3).

> However, if Srimati Sogra Begum is registered by us as an Indian citizen, she will by virtue of this fact itself cease to be a Pakistani citizen under section 14(1) of the Pakistan Citizenship Act, 1951. The requirement of renunciation of the alien nationality may therefore be deemed to be satisfied in this case.... (ibid.: 1)

More interesting, perhaps, and something which the archival records capture only obliquely is the way in which some of these categories—'registered wives' and, in particular, 'displaced persons'—occupied a zone of uncertainty in the intermediate period between constitutional closure and statutory opening. Sogra Begum's profile shows that she got married to a M.G. Kibria in February 1955, came to India after her marriage, had been living in India 'continuously' since 20 June 1955, and was registered as an Indian citizen on 14 August 1958. In Sogra Begum's case, we may recall, the issue of loyalty and duration of stay was brought up by the MHA. Zeherambanu Hasanali was a Pakistani national who came to India in September 1955 on a Pakistani passport and short term visa, got married to Hasanali Mahomedali Khoja, 'an Indian national by birth' on 23 November 1955, applied for 'permission for permanent settlement in India'/'long term visa' on 26 December 1955 and for citizenship on 19 May 1957 (letter dated 2 July 1957 from the District Magistrate, Belgaum, File no. 6/40/57, MHA (IC) NAI: 1). In the meantime, she had been residing 'continuously' at Gokak in Belgaum district. It may be noted that a person in possession of a long term visa or permission for permanent settlement in the period before the Citizenship Act came into existence, was seen as someone already on the track to citizenship, and when the Act came into being could register as a citizen under section 5(1)(a) of the Act. Interestingly, the MHA had decided that Pakistani women who had been allowed permanent resettlement or granted long term visas could be registered as Indian citizens under section 5(1)(a). This meant that they could become citizens individually, without any consideration of their status emerging from marriage and the requirement, therefore, to register under section

5(1)(c). However, in Zeherambanu's case, while the IC section of the MHA was aware that she had applied for permission for permanent settlement, it was not clear that she had actually received it. The papers forwarded to the MHA by the District Magistrate of Belgaum said that her application for permanent settlement had been forwarded to the Government of Bombay, but did not have any information on its outcome. While Zeherambanu's papers for registration as a citizen upon marriage to an Indian citizen were considered to be in order, the MHA considered it 'desirable to know the action that was taken on her [other] application [for permanent settlement]' (ibid.: 2). Simultaneously, about eight months after the application had been made and forwarded to the MHA, the Deputy Secretary noted his query:

> Have we any information in regard to the circumstances in which the applicant migrated to Pakistan? How long she stayed in that country? What are her relations to Pakistan? Whether she came to India to marry the applicant or this was only incidental?
>
> If we have no information on these points, it may be better to obtain it before taking a decision. In the meantime, the applicant may be allowed to stay in India. (Note dated 22 January 1958 by the Deputy Secretary, IC section, MHA, File no. 6/40/57, MHA (IC) NAI).

The application submitted by Zeherambanu may be read as a document providing the broad trajectory of her consecutive transition(s) from one status to another in a span of about twenty years. Born in Bombay on 7 July 1937, Zeherambanu migrated with her father to Pakistan when she was 10 years old, in July 1947, after the temporal boundary provided in the Constitution for Indian citizenship. She acquired Pakistani citizenship by naturalization. She entered India in July 1955 under a Pakistani passport and a short term visa, which was later extended by the Assistant Secretary, Government Political and Services Department, Bombay, permitting her to stay in India up to 10 July 1957. In the meantime (in May 1957), she applied for Indian citizenship and in January 1958, she was permitted to stay on in India till a decision on her application was taken.[13] It is interesting how Zeherambanu comes across in official communications as having an 'unstable' citizenship, owing to her periodical movement and, therefore, under a constant shroud of suspicion. Her husband, on the other hand, who was 'born in India' and, unlike Zeherambanu, continued to stay in India as an embedded Indian citizen, comes across as benign and stable, as distinct from his wife.

[13] For details of Zeherambanu's journey into Indian citizenship see File no. 6/40/57 MHA (IC) NAI.

Applications by Pakistani women married to Indian men, for registration as Indian citizens, went through the same procedures. The officials in the Indian Citizenship section of the MHA received the application forwarded by the government of the state where the applicant was domiciled after her marriage, ascertained whether the applicant 'satisfied residential qualification required under rule 4(3) of the Citizenship Rules, 1956' and whether she had given an undertaking through a sworn affidavit to renounce her Pakistani citizenship in the event of her 'application being sanctioned'. They also had to confirm that the IB had 'nothing adverse on their records' and that the MEA had no objections to her registration. Yet, each application, as evident from the above discussion of Sogra Begum's and Zeherambanu's 'cases', was also specific, in the sense that each elicited distinct concerns from the officials and a corresponding line of reasoning for the award of citizenship.

Yasmin K. Wadia, a Pakistani national who married Keki J. Wadia in Bombay on 18 November 1955, had been residing 'continuously in India since 23 September 1955' after coming to India for the purpose of marriage (File no. 20/42/57, MHA-IC, NAI: 1). Unlike Zeherambanu, who had migrated to Pakistan during partition, Yasmin Wadia was born in Karachi, where her parents, both of whom were born in Bombay, were domiciled at the time of her birth. Minochar Dhala, Yasmin's father, continued to stay in Karachi, where he owned property, and Yasmin was 'brought up and educated' in Karachi. In a letter marked 'secret', the Deputy Commissioner of Police, Special Branch, CID, Bombay, provided the above information to the Under Secretary in the Political and Services Department of the Government of Bombay, stating that there was 'nothing politically adverse known against her and her husband on the records of this office' (letter no. 14572/1PP, dated 16 November 1956, File no. 20/42/57, MHA-IC, NAI: 13). While 'clearing' Yasmin's application for citizenship, which could then be forwarded to the MHA in the Government of India, the Deputy Commissioner of Police made special mention of the fact that 'the applicant has no vested interest or property either in India or in Pakistan. She was brought up and educated at Karachi. Keki Wadia states that he has no vested interest or property either in India or in Pakistan. However, he states that his wife is maintaining contacts with the country of her domicile of origin by writing periodical letters to her relations stationed in Pakistan' (ibid.). Almost a year later, in November

1957, convinced that Yasmin 'would make a loyal and useful citizen', the Deputy Secretary in the MHA accepted her application for registration as an Indian citizen (Noting dated 21 September 1957, by the Deputy Secretary in the MHA and ibid.).

Sarwar Bano was born on 20 October 1931 in Calcutta, where she resided till 1946, when she went to Dacca (now known as Dhaka) with her parents. She got married to an Indian citizen, Jamil Rahman Khan, in Dacca on 22 April 1955. An official of the government of West Bengal traced her movements across borders as follows:

> After her marriage, she came to Calcutta on the 6 May 1955 with a Pakistani passport and resided here till the 10th July, 1955 when she went back to Pakistan. She again came back to Calcutta on 8th June 1956 and stayed here till the 1st January, 1957 when she paid another visit to Pakistan eventually returning to Calcutta on the 2nd February, 1957. She has been residing in India continuously since the 2nd February, 1957. Her husband, Shri Jamil Rahman Khan, is an Indian citizen by birth and he is the holder of an International Passport issued by this Government. There is nothing adverse on record against the lady (Letter dated 14 January 1958 from the Deputy Secretary to the Government of West Bengal to the Ministry of Home Affairs, Government of India. File no. 6/2/58, MHA-IC, NAI).

Sarwar Bano's father was a former member of the Indian Civil Services. Her case for registration was rejected by the MHA on technical grounds since she did not 'satisfy the residential qualification of one year's continuous residence in India immediately preceding the date of her application as prescribed under Rule 4(3) of the Citizenship Rules, 1956' (Letter dated 23 January 1958 to the Government of West Bengal, from the Ministry of Home Affairs (IC Section) and ibid.). The West Bengal Government made a fresh application on Sarwar Bano's behalf on 10 February 1958, when the residential requirement was completed. Interestingly, the High Commissioner of India in Pakistan, a friend of Sarwar Bano's father, put in a word to the MHA to expedite the proceedings because Bano had to attend a wedding in the family in Dacca, and did not want to go there 'unless her nationality question was finally settled in her favour' (Letter dated 17 February 1958 from C.C. Desai, High Commissioner of India in Pakistan and File no. 6/2/58, MHA-IC, NAI).

Sarwar Bano's intermittent visits to her family in East Pakistan delayed her registration as an Indian citizen. The question of residential requirement of a year came up for discussion in other cases, where a decision to 'allow relaxation in exceptional cases' was taken. Rule 4(3) laid down: An application under sub-rule (1) shall not lie unless for one year immediately before the date of application, the applicant—

(a) has resided in India; or (b) has been in the service of Government of India. [Explanation: In computing the period of one year, broken periods of residence and service under clauses (a) and (b) may be taken into account.] The MHA noted that in the cases of 'foreign wives of Officers in the IFS the applicants fail to satisfy the requirement of rule 4(3) in circumstances on which they have no control' (File noting at the Ministry of Law. File no. 6/46/58, MHA-IC, NAI). In one such case, Odette Chatterjee could not fulfill the residential requirement as she went to Karachi in November 1955, a month before she could complete a year of continuous residence, when her husband was posted there as Deputy High Commissioner for India. The requirement of actual physical residence for one year immediately before the date of making the application was waived in her favour as it was felt that Mr Chatterjee might very likely have been posted to some other station direct from Karachi in the exigencies of service and she would not in that case, have been able to satisfy the prescribed condition of one year's residence for some considerable time. Having regard to these special circumstances, the Ministry of Law agreed that 'it was at best a technical difficulty and without going into the niceties of the legal question, and having regard to the special circumstances, Smt Odette Chatterjee might be registered as an Indian citizen' (ibid.).

Amidst communications that took place among the Ministries of Law, External Affairs, and Home Affairs, the question of amending Rule 4(3) came up in the case of Lucia Powar, an Italian national, who was resident in India from 1946 to 1949. Lucia returned to Italy in 1949 with her husband, who joined the Indian Embassy in Rome in 1950 as a local recruit. He was subsequently absorbed in the Indian Foreign Service (IFS) and was posted away from Rome in Mombasa, where he was expected to continue for the next few years. It could also not be ascertained whether he would return to the headquarters after his term in Mombasa or posted elsewhere. In these circumstances, the MHA averred that 'Mrs Lucia Powar may not be able to fulfill the requirement of one year's residence immediately before making her application, for some considerable time, and she cannot be registered as an Indian citizen under section 5(1)(c) of the Act without fulfilling this statutory requirement'.[14]

[14] There were other cases that the ministries discussed of wives of Indian nationals in the foreign services, including that of Ethel Ella Elsie Kesavan, wife of N. Kesavan, First Secretary, Indian Embassy, Rangoon, as well as 'wives of Indian citizens employed with International Organisations' (ibid.).

Anjali Roy was only 'technically a Pakistani national'. Born in Calcutta in February 1935, she would have been an Indian citizen at the commencement of the Constitution, had she not been a minor then. While Anjali and her mother had continued to reside in Calcutta after 1947, her father had settled in Dacca and was, therefore, a Pakistani national. Being a minor at the commencement of the Republic, Anjali's nationality followed that of her father, and she continued to be a Pakistani national residing in India till she married Sudhir Kumar Roy, an 'Indian citizen by birth', in December 1953, and became eligible for registration as an Indian citizen (Express letter no. 4898-P/7C-425/58, dated 16 June 1958, from the Government of West Bengal to the Ministry of Home Affairs (IC Section). File no. 2/11/58. MHA-IC, NAI). Anjali Roy's case is striking for the manner in which 'voluntariness' seemed to be unfolding in disparate and contradictory ways. The papers in support of Anjali's application do not state her mother's nationality, which is most likely to have been Indian, since there is no mention of her having left India at any point to join Anjali's father. For Anjali, however, the choice of Indian citizenship was foreclosed by her father's nationality on the date of the commencement of the Constitution, which opened up with her marriage to an Indian national. At around the same time, the MHA was approached by the Rajasthan government to resolve the question of women's nationality in cases where other family members, in particular the husband, had Pakistani nationality. In a letter dated 29 October 1958 to the MHA, the Assistant Secretary to the Government of Rajasthan expressed the state government's quandary over the 'question whether ladies coming to India on Migration Certificates but whose husbands are Pakistani nationals are eligible for registration as Indian citizens'. Seeking the government's advice, the letter stated:

> a question has arisen whether a lady, belonging to the minority community in Pakistan, who has come to India on a Migration Certificate issued by the Indian High Commission in Pakistan and whose husband is still in Pakistan and is a Pakistani national, is eligible for registration as a Citizen of India u/s 5(1)(a) of the Citizenship Act, 1955. The Act and the Rules made thereunder are, however, silent on this point . . . (Letter dated 29 October 1958 from the Assistant Secretary to the Government of Rajasthan to the Secretary, Ministry of Home Affairs, Government of India. File no. 4/221/58, MHA-IC, NAI).

In a noting on the letter from the Rajasthan government, the Under Secretary to the Government of India saw the case as raising a general question:

> Normally it is not our policy to encourage members of the same family to have different nationalities . . . but it may not always be possible to stick to this policy especially when the husbands are made to stay back in Pakistan by circumstances beyond their control. Each case will, however, have to be examined on its individual merits, to find out whether a departure from the general policy is justified, and as such, it will not be possible to give general instructions to the State Government . . . . (File noting dated 13 November 1958, ibid.)

The official position that emerged out of the Rajasthan government's query was summarized by the Under-Secretary, Government of India, as follows: (1) The Government of India, as a general principle, would not 'encourage members of the same family to have different nationalities'; (2) Yet, in cases where 'it is established that husbands of applicants are precluded from coming to India and acquiring Indian citizenship by circumstances beyond their control it may not be justifiable to deny Indian citizenship to the ladies concerned'; (3) Each case, however, would require to be examined individually to confirm whether a departure from the general principles was justifiable (Letter dated 20 November 1958 from the Under Secretary to the Government of India to the Secretary, Government of Rajasthan, ibid.).

It is interesting that the official position should have been explained to the state government in terms of a general policy which preferred that the husband and wife would have the same nationality, and claims to a different nationality by the wife would be an exception depending on the 'merits' of each case. Almost a year before, the Ministries of Law, Home Affairs, and External Affairs, had conferred at length over the response that the Indian government should send to the 'Draft Convention on the Nationality of Married Women' which was to be taken up by the General Assembly of the United Nations at its Eleventh Session beginning from 12 November 1956. The Draft Convention had been prepared by the Commission on the Status of Women and submitted to the Economic and Social Council (ECOSOC), which had recommended its transmission to the General Assembly for adoption. In its preparation for this session of the ECOSOC, the Indian delegation had been instructed to explain that as the Indian Citizenship law had not yet been passed, 'India could not accept the model convention or offer any comments thereon that stage'.[15] In the forthcoming session of

[15] The brief was dated 9 October 1956 and prepared by the MEA and conveyed to the MHA and Ministry of Law, giving a background of the issue in preparation for the upcoming session of the General Assembly. (File no. 6/49/57, MHA-IC, NAI).

the General Assembly where the draft was to be put up for adoption, the position had changed, since the Indian Citizenship Act was now in place. Unlike the position articulated earlier by the Government of India in its communication on the question of the nationality of married women, the present position to be conveyed to the United Nations was that there was no conflict between the Indian citizenship laws and the Draft Convention. This consonance emerged from the legal provision whereby the nationality of the wife was not dependent on or determined by that of her husband.[16] The officials pointed out, in particular compatibility with the provisions laid down in Article 1 of the convention, that the nationality of the wife shall not be affected by: (1) the celebration of a marriage between a national of the contracting party and an alien; or (2) the dissolution of a marriage by one of its nationals and an alien; or (3) the change of nationality of the husband during marriage:

> The grounds of termination of citizenship under the Indian Citizenship Act are voluntary renunciation by a citizen of full age and capacity; the voluntary acquisition of citizenship of another country by naturalisation, registration or otherwise; and deprivation of the citizenship by order of the Central Government. Marriage to an alien or the dissolution of a marriage with an alien or the change of nationality by the husband are not factors which would, under the above provisions, affect the nationality of a wife. The principle that a wife's nationality should not be dependent on that of the husband has been indirectly recognised by our citizenship laws.[17]

The brief prepared by the ministries then identified the special provision under the Indian citizenship laws for registration of 'alien wives':

> Our law provides for a special mode of acquisition of Indian Citizenship by the alien wife of an Indian citizen. She is required to reside in India for a period of one year before applying for such registration and also renounce her original nationality.... This procedure is much simpler than the procedure for the naturalization of aliens contained in our law . . . (ibid.).

Yet, as another set of communications shows, the government was not inimical to Pakistani women registering as citizens of their own

[16] As per the communications that took place between the officials of the three Ministries between October 1956 and March 1957 (ibid.).

[17] Brief for the Eleventh Session of the General Assembly of the United Nations pertaining to Item 34—Draft Convention on the Nationality of Married Women—External Affairs memorandum No. D. 5905-UN III/56 of 3.1.56 and Ministry of Law u.o. no. 3348/56 of 20.9.56 (ibid.).

accord, that is, as individuals, under Section 5 (1) (a) of the Citizenship Act, rather than as wives under Section 5 (1) (c), despite their having married Indian nationals (see for details, File no. 6/11/57, MHA-IC, NAI). The discussion was triggered off in 1957, ironically by the ambiguity generated by the precise statutory guidelines laid down by the Citizenship Act and Rules and the provisions that had been worked out periodically by India and Pakistan to address issues of movement of people across the borders. The government of Uttar Pradesh (UP), for example, brought to the Home Ministry's notice the discrepancy in the instructions issued by the central government, ensuing from the position taken with regard to the registration of persons who migrated to Pakistan and were 'readmitted into India either on the strength of permanent settlement permits or long term visas' (Express letter no. 59 CP/VIII-D-433 PT/54, dated 23 February 1957, marked secret, from the under secretary to the government of Uttar Pradesh to the secretary to the government of India, MHA, File no. 6/11/57, MHA-IC, NAI: 11). The instructions issued in July 1956, following the enactment of the Citizenship Act and the framing of Rules, required that the registration of such persons as citizens was 'to be effected along with the registration of displaced persons from Pakistan' under Section 5(1) (a) or 5(1)(d) of the Citizenship Act. The inconsistency, as pointed out by the UP government, arose from a later instruction issued by the Central government, whereby Pakistani women married to Indian citizens were to be treated 'on the same footing as other alien wives of Indian citizens' and registered under section 5(1)(c) of the Citizenship Act. These instructions, it argued, put at a disadvantage, 'Pakistani wives/widows of Indian citizens', 'who inspite of their holding long term visas' will be able to register only under section 5(1) (c), which had a more tedious procedure:

> The State Government, however, feel that if a Pakistani wife/widow of an Indian citizen inspite of her holding long term visa is to apply for registration under section 5(1)(c), she will obviously be put in a disadvantageous position when compared with other long term visa holders, who are eligible for registrations under sections 5(1)(a) or 5(1)(d) as according to rule 4(1) of the Citizenship Rules she will have to produce documentary evidence to show that she has renounced or lost the citizenship of her country in accordance with the law in force therein or furnish an undertaking in writing that she will renounce that citizenship in the event of her application being sanctioned. Again according to schedule IV of the said Rules she will have to pay a fee of Rs.50/- for her registration. Moreover, in accordance with rule 4(3) of the said rules she can apply for registration only after she has resided in India

for one year. This discrimination between a Pakistan [sic] wife/widow of an Indian citizen holding long term visa and other long term visa holders, who are eligible for registration under section 5(1)(a) or 5(1)(d) does not seem to be very happy (ibid.).

A similar query came from the Government of West Bengal. They wanted to know whether a Pakistani wife/widow of an Indian citizen would be considered an 'alien woman' and asked to pay the fee of Rs 50 under the Citizenship Rules for registration under Section 5(1)(c) of the Citizenship Act. Since the section in the Act itself did not mention the term 'alien women', the West Bengal government wondered why the term 'alien women' had been included in the Citizenship Rules, since 'Pakistani women married to citizens of India would be mostly of Indian origin (in the sense that this term had been used in the "Explanation" to section 5(i) of the Citizenship Act, 1955)' and asked whether the requirement of fee payment would apply also in cases where 'Pakistani women have been married to displaced persons from Pakistan who came over to this country before their marriages and are now facing numerous problems to get themselves rehabilitated here'.[18]

Internal communications between the officials of the Home Ministry, before a circular letter was prepared and issued, showed that the officials concurred that 'long term visas were granted to persons to enable them to acquire Indian citizenship under the provisions of the Citizenship Act, 1955' and persons holding long term visas were eligible for registration under Sections 5(1)(a) or 5(1)(d). Similarly, 'Pakistani women who have been married to displaced persons from Pakistan' as well as 'Pakistani women holding long term visas' were eligible for registration under the above sections. The Deputy Secretary in the Home Department noted:

> As far as I am concerned, long term visas (which implied permanent settlement in India) were granted to Pakistani wives of Indian citizens not only because they were married to Indian citizens but after taking into consideration all other relevant factors. The intention also was that they should be registered as Indian citizens as soon as the Citizenship law was enacted ... that is why *no exception was made in this category when general instruction were issued.* (Note dated 24 May 1957, ibid. [emphasis added])

[18] Letter dated 8 January 1957 from the Deputy Secretary of the West Bengal government, in the Home Department, to his counterpart in the Home Department in the Central government (ibid.).

It is interesting and reflective again of the manner in which the citizenship question had been resolved in the period which intervened between the time when the Constitution came into force and the enactment of the Citizenship Act, that the Rajasthan government, around the same time, should have felt and conveyed the following to the Central government on the matter:

> It is the view of this State Government that in such cases reference to Government of India should not be necessary as those whom Long Term Visas or one year visas has been granted, are for all practical purposes, already nationals of India .... (letter dated 11 June 1957 from the Deputy Secretary, Home Department, Government of Rajasthan to the Secretary, Ministry of Home Affairs, Government of India, ibid.)

Yet, almost a year after the question of the procedure concerning the citizenship of Pakistani women having come to India on long term visas and married to Indian men had been resolved, the Rajasthan government remained uncertain about the 'exception'. As a Home Department official in the Rajasthan government conveyed in his letter dated 24 June 1958 to the Secretary in the Home Department:

> I am directed to say that a question has arisen whether Pakistani women who have been married to Indian Citizens and have come to India on Migration Certificates are eligible for registration as Indian citizens under section 5(1)(a) of the Citizenship Act or Section 5(1)(c) of the Act is attracted in such a case (File no. 6/48/58, MHA-IC, NAI).

The legal resolution of the citizenship conundrum relating to large numbers of people moving across what had become ossified borders was taking place within a political and social context where a 'Muslim' in India was an anachronism and whose loyalties were seen as suspect. In a provocatively titled article, 'Can a Muslim be an Indian?', Gyanendra Pandey (1999: 609–29) points out how the Muslims—those who stayed in India as well as those who returned to India from Pakistan—were virtually a 'community on trial'. While their patriotism was always cast in a web of suspicion in the press and in speeches by leaders, which demanded extraordinary proof of loyalty, those who returned or withdrew from their earlier decision to migrate were put under a perpetual 'Pakistani' label. In November 1947, for example, nearly 5,000 Muslim railwaymen who had earlier opted for Pakistan and later refused to leave, became subject to the charge of being Pakistani agents (ibid.: 628). The citizenship of minority (Hindu) population which came to India from Pakistan seemed to have presented no such problem for the

authorities. Unlike the exchange and flow of population on the western border, where the constitutional deadline for migrants from Pakistan to claim citizenship in India was treated as final and legal provisions for the citizenship of some categories were made, the eastern border remained permeable for a long time. Moreover, exceptions to the general legal requirements were made to accommodate people moving across these borders, who were placed under the category of 'displaced persons'. Significantly, while the category 'displaced' conveys the possibility of 'returning' (back), the displaced persons in this case were to be brought into the fold of citizenship with relative ease.

'DISPLACED' INTO CITIZENSHIP

Communications among officials on the question of the legal accommodation of Hindus migrating to India reveal that it was 'understood' that the legal confirmation of Indian citizenship of displaced (Hindu) minorities from Pakistan was to be facilitated and expedited. Moreover, their complete absorption in the fold was to be accomplished not just through their expeditious registration as citizens but also through their urgent inclusion in the electoral rolls, in time for the second general elections. Thus, when the draft citizenship rules were being framed in 1956, the Deputy Secretary (Home Affairs) issued 'urgent' instructions to the various state governments asking them to make 'immediate arrangements' for the registration of 'displaced persons' under Section 5(1)(a) of the Citizenship Act 1955, 'as this was linked up with the enrolment of voters for the next general elections'. The letter, copied also to the Ministries of External Affairs, Rehabilitation, and Law and to the Election Commission, stressed the necessity of taking:

> immediate steps so that the displaced persons who have migrated from Pakistan and have not yet become citizens of India are enabled to obtain their franchise in the next general election. Their names cannot, however, be included in the electoral rolls now under preparation, unless they are registered as Indian citizens. All necessary arrangements should therefore be made to complete the registration of displaced persons as Indian citizens with all possible dispatch (Executive instructions issued in the letter from the Deputy Secretary (Home) dated 14 June 1956. File no. 10/1/56, MHA-IC, NAI).

The letter also drew attention to the assurance that had been given in Parliament 'that the registration of such persons will be effected with the least inconvenience to them' (Express letter from the Deputy Secretary (Home) dated 12 July 1956 to all state government, File no. 10/1/56, MHA-IC, NAI). This basically meant, as the letter specified, making arrangements for their registration, 'in all places where they are residents in reasonably large numbers, e.g., towns, villages, refugee camps, settlements, etc' (ibid.). The state governments were 'requested to take immediate steps' (ibid.) for the selection of registration officers, and intimate their 'full names, designations, and the areas which will be under their charge' (ibid.) by 25 June 1956. Moreover, since the number of persons who may offer themselves for registration in each state was not immediately clear, the letter asked that the application forms be printed as quickly as possible, and 'to have the forms printed locally according to the requirements of each State'. No fee was to be charged from displaced persons for registration under section 5(1)(a) of the Act and the expenditure incurred in connection with registration was to be borne by the Central government. The last item on the instruction concerned the 'large number of Muslims who migrated from India to Pakistan and have now been re-admitted to either on the strength of permanent resettlement permits or long term visas'. Their registration as citizens, the Deputy Secretary instructed, could also 'be effected along with the displaced person'.[19]

Interestingly, the Indo-Pak agreements reached at the Inter-Dominion Conferences held in New Delhi in December 1948, Calcutta in April 1948, and Karachi in May 1948 agreed on the following principle regarding the protection of the rights of minorities and issues arising from the movement of minority populations:

> They (i.e. India and Pakistan) reiterate their opinion that mass exodus of minorities is not in the interest of either Dominion and Governments of both Dominions are determined to take every possible step to discourage such exodus and to create such conditions as would check mass exodus in either direction (Preamble, Calcutta agreement). Even apart from this, they solemnly and sincerely declare that their governments are fully determined to ensure for the minorities in their respective states all rights of citizenship and complete protection of life and liberty.[20]

[19] ibid. In response to the MHA's letter, in a letter dated 19 June 1956, the Deputy Secretary, Ministry of Rehabilitation, stated that they 'had no comments to offer except that the provision of Displaced Persons and Muslims who have returned to India from Pakistan on the strength of permanent resettlement permits or long term visa, which is only upto 30th September 1956, would appear to be too short. File No.13(25)/55-N, NAI.

[20] Extracted from agreement reached at the Inter Dominion Conference in Karachi in January 1949 and in New Delhi in April 1949. File no. 31/3/54 (LDHC), Vol. II, NAI: 9.

It is interesting that these extracts figured in the files of communications by the Deputy High Commissioner of India in Lahore, entitled 'Evacuation of Non-Muslims from Pakistan: Difficulties Experienced by Harijans at the Hands of Pakistani Authorities', pointing out the 'delaying tactics' adopted by the Pakistani authorities to 'prevent Harijans from leaving Pakistan for India as migrants' and the 'ban imposed by the Government of Pakistan on the movement of Indian sweepers from Pakistan to India'. The reasons for this ban and delaying tactics, however, did not emanate from the agreement cited earlier, in which each government promised to protect the minority populations residing in their territory, in order to stem their mass exodus. As the Deputy High Commission for India in Pakistan reported in a letter dated 27 November 1954:

From the reports I have been sending to the Ministry and the High Commissioner from time to time . . . in view of the protracted delays taking place at the Secretariat level, I took up the matter again with the Chief Minister on 18th November when he agreed to let the men go over to India as a special case, provided that in future we will not ask for facilities to evacuate en masse large numbers of people, particularly the Scheduled Castes to India as we are doing in the present case. He said he was forced to make this condition because at the rate at which the Scheduled Castes have been migrating to India in recent years, some of the districts, especially Sialkot, would soon be denuded of a very essential class of labour and that was going to hit the economy of those districts. . . . (ibid.)

As in the case of registration of Pakistani women on long term visas and those married to displaced persons or Indian nationals, the procedure regarding the registration of displaced persons continued to raise queries from different state governments. Unlike, however, the cases of 'registered wives' discussed above and the case of 'minors' to be discussed later in the chapter, the registration process was based on an assumption of trust, and was to be facilitated and accelerated. Thus, queries from the governments of West Bengal and Tripura regarding 'persons of minority community of Pakistan' who were not able to produce proof of their having surrendered their Pakistani passports and whether they could be asked to swear on an affidavit as having done so, in order to ease their registration into Indian citizenship (Express letter dated 11 April 1958 from the government of West Bengal to the Ministry of Home Affairs, IC Section. File no. 4/65/58, MHA-IC, NAI), elicited the following response from the MHA:

It is quite clear that we have to make registration as simple as possible in such cases. It is therefore not necessary to insist on acceptance of surrender of Pakistani passports by the Deputy Commissioner for Pakistan at Calcutta before registration is effected. If such a condition is laid down, it is almost certain that these persons will be subjected to a good deal of harassment by the Pakistan authorities in India .... (Internal communication dated 8 July 1958, ibid.)

The process of simplification and facilitation involved introducing exceptions in the general requirement for registration as citizens under Section 5(1)(a). In the discussion among officials in the Home Ministry on the registration of Pakistani women married to Indian nationals and displaced persons, as discussed earlier, the decisive factor which qualified these women as candidates for registration under the same section [rather than the more tedious 5(1)(c)] was that they had all come to India before the Citizenship Act was enacted under long term visas. We know from the official deliberations that long term visas held out the promise of assured citizenship in the post Citizenship Act regime, in the sense that it enabled them to be construed as 'ordinarily resident in India', under the requirements of the Act. In the case of displaced persons under consideration by the government of West Bengal and Tripura, the applicants had entered India on short term visas and were not, therefore, as the official note puts it, 'ordinarily eligible for registration under section 5(1)(a) of the Citizenship Act, 1955'. The internal note circulated for discussion among the officials of the Home Ministry in preparation for the instructions that could be issued to the two state governments emphasized:

the persons about whom the present reference has been made belong to the minority community in Pakistan and are stated to have sworn declarations renouncing their Pakistani nationality. It is also stated in the M.E.A.'s letter no. F6(44)/57-PSP, dated the 14.4.58 that in most of these cases their permanent settlement in India would eventually be granted. Their present ineligibility for registration under section 5(1)(a) of the C. Act is therefore *only technical*.... in cases where the applicants belonging to the minority community in Pakistan are staying on in India swearing affidavits that they have surrendered/lost their Pakistani passports, it was for the authorities to satisfy themselves that the intention was to permit the persons concerned to stay on indefinitely in India or the applicants have severed all connections with Pakistan and intend to settle down permanently in India; and in cases where the authorities are so satisfied, the applicants can be registered under section 5(1)(a) .... ([emphasis added] Note dated 18 July 1958, Ministry of Home Affairs (IC Section, ibid.)

It is indeed significant that specific requirements pertaining to the possession or surrender of the passport, documentary proofs, and the nature of entry permit should have been waived in the case of

minority communities of Pakistan (Hindus) construed as displaced persons entitled to special consideration. In another case, which shall be discussed in the following section, we shall see how adherence to these requirements was seen as essential while determining the citizenship of a minor, a Muslim, whose mother was an Indian citizen under the Constitutional provisions.

'MINORS' AND THE CONTEST OVER VOLUNTARY RENUNCIATION/ACQUISITION OF CITIZENSHIP

Discussed in communications between officials of the MHA and the Ministry of Law as 'the first case after the enactment of the Indian Citizenship Act, and the making of the rules, in which the holder of a Pakistani passport claims Indian citizenship' (Note dated 8 January 1957 by the Joint Secretary, Ministry of Law on 'Union's defence in the application on behalf of Wajid Alam, alleged minor', File no. 13/16/57, MHA–IC, NAI: 7), Wajid Alam's 'case' raised several contending issues. While the case apparently involved a dispute over whether a 'minor' could 'voluntarily' renounce or acquire citizenship, the manner in which the case unfolded, and was subsequently resolved, manifested a contest over the demarcation of the respective domains of institutional authority on matters pertaining to citizenship.

Wajid Alam was born in 1940 in village Kopa, Pargana Masaurha, in Patna district in India. Wajid's father Naseemuddin had died in 1946, 'killed during the common [communal] disturbance'.[21] After Naseemuddin's death, Wajid and his mother Bibi Shahar Bano shifted to village Firoza in the Gaya district of Bihar and continued to reside there with Wajid's grandfather. In 1952, Wajid's uncle, Kasimuddin, who was a Central government employee in undivided India and had opted for Pakistan after Partition, and now lived in Sylhet district in East Pakistan, came to visit them in India. When Kasimuddin returned to Pakistan in the same year, he took Wajid with him, promising to bring him back in a couple of months. Wajid was then 12 years old. Kasimuddin fell ill upon his return to Sylhet and by the time he recovered, the passport system had been introduced between India and Pakistan, which became effective from 15 October 1952. With the introduction of the passport system, Wajid could not cross the borders without a passport which showed him to be a national of either of the two countries. In 1954,

[21] Details as provided in the petition by Bibi Shahar Bano before the High Court at Patna (Appendix, File no. 13/16/57, MHA-IC, NAI: 2).

Kasimuddin met the High Commissioner of India in Dhaka, who expressed his inability to help Wajid in the matter. The only way he could now travel to India and return to his mother was by procuring a Pakistani passport. Kasimuddin's friends advised him that on reaching India, the passport could be surrendered in the office of the Deputy High Commssioner for Pakistan in Calcutta. Wajid, now 14, travelled to India on a Paksitani passport and a short term Indian visa. In Calcutta, however, he was told by the Pakistani High Commissioner's office that it was not possible to surrender his passport. Wajid then went to Kopa and got enrolled in a village school in Bihta. He got his visa extended periodically, until in July 1956, the state government refused to extend it beyond 1 September 1956, and advised him to get the visa renewed by the Indian High Commissioner in Karachi. Wajid Alam's mother decided to contest this decision and petitioned the Patna High Court, claiming that Wajid Alam was an Indian citizen, and did not require any visa to stay in India.

While petitioning for her son, Bibi Shahar Bano made five significant claims (Civil appeal no. 643 of 1956, *Bibi Shahar Bano and Another v. The State of Bihar and Others*)

a. that Wajid, in fact, never 'migrated' to Pakistan
b. that he never 'voluntarily' acquired the citizenship of Pakistan
c. that, being a minor, he was 'incapable' of acquiring citizenship
d. that he acquired a Pakistani passport, since without it he would not have been able to travel to India
e. that he was an Indian citizen and by asking him to leave India or by restricting/controlling his movement in India, the government was violating his constitutional rights.

Much of the case was built on the premise that as a minor, not only did Wajid have no say in deciding where he went or how long he stayed, he was, in fact, oblivious of the legal intricacies involved and the implications of his movements between the two countries. Paragraphs 6 onwards of the petition, which narrate the sequence of Wajid's travel to and back from Pakistan, show how an older person was constantly determining his circumstances:

> f. That in 1952 when the said Kasimuddin [Wajid's Uncle] was going back to Pakistan he took petitioner no. 2 [Wajid] with him saying that he will send him back after a month or two.
>
> g. That as ill luck would have it the said Kasimuddin fell seriously ill after going to Pakistan and was bed ridden for about six months and

in the meantime passport system was introduced between India and Pakistan.

h. That after his recovery from illness the said Kasimuddin who lived in Sylhet (East Pakistan) tried his best to send petitioner no. 2 to his mother and grandfather who live in Bihar but could not succeed because of the introduction of the passport system.

i. That all the time your petitioner no. 2 was very anxious to come to his mother but was told that unless he had a passport he could not go beyond the boundaries of Pakistan.

j. That in 1954 the said Kasimuddin went to the office of the Deputy High Commissioner for India at Dacca and wanted to know if he could be of any help to petitioner no. 2 in his going to his home land but was told that nothing could be done.

k. That then the only way left for your petitioner no. 2 for coming to India was to get a Pakistani Passport and come here. He was accordingly advised by his well wishers that he should take the passport and [in] India he should surrender it in the office of the Deputy High Commissioner for Pakistan at Calcutta ....

l. That when your petitioner no. 2 came to India his Uncle Md. Rafique Uttahhid took him to the office of Deputy High Commissioner for Pakistan at Calcutta so that your petitioner no. 2 may surrender his passport but was told that it could not be done.

m. That your petitioner no. 2 then came to Kopa and is reading in class VI of a School in Bihta (ibid.).

The High Court admitted Shahar Bano's petition against the Bihar government, the District Magistrate of Patna, and the Government of India. It is interesting how in its response, made through a counter-affidavit on 28 September 1956, the Bihar government remained silent on the question of Wajid Alam being a minor, and steered entirely clear of the associated issue of the involuntariness of his travel to and back from Pakistan. On the contrary, much of its case against recognizing Wajid's citizenship was based on the grounds that Wajid had 'acquired' a Pakistani passport (and, therefore, Pakistani citizenship), had 'concealed' facts about his stay in India and now 'intended' to prolong his stay in India 'indefinitely while retaining his Pakistani citizenship'. While the petition filed by Wajid's mother took pains to show how Wajid had no role in any of the decisions that had been taken regarding his travel and stay in Pakistan or in India, the counter-affidavit filed by the Bihar government made Wajid not just complicit in the events that led to the loss of his

Indian citizenship, but also made him the sole person responsible for his predicament. Unlike the petition in which the mother, the two uncles, and the grandfather appear as people who were either accompanying or guiding Wajid at crucial moments, in the counter-affidavit, Wajid is not just the only person mentioned, he figures as a person consciously choosing and deciding on matters relating to his travel and stay.

Paragraph 4 of the counter-affidavit filed by the Bihar government on 24 September 1956 stated:

with respect to the statements mentioned in paragraphs 8 and 9 and 11 of the petition it is stated that in accordance with Indo-Pakistan agreement, Indian national in Pakistan from before the 15th October, 1952 and intending to continue there for employment or otherwise, were to equip themselves with valid India Passport and Pakistan Visas by 14th January 1953. This date was periodically extended till finally it was fixed at 30th April, 1954. During this period the State Government issued Indian Passports to a very large number of Indians residing in Pakistan on receipt of their application through the diplomatic missions at Pakistan. *Petitioner no. 2 [Wajid] it seems made no attempt to get an Indian Passport. In the alternative he could have obtained a repatriation certificate from the India Mission in Pakistan.* (Counter-affidavit filed by the government of Bihar in the Patna High Court on 26 September 1956. Annexure to File no. 13/16/57, MHA-IC, NAI: 1 emphasis added)

Paragraph 6 stated: 'The fact that he was attending a school was kept concealed from the state government throughout; and extensions of visas were prayed for on ground of illness supported by Medical certificate' (ibid., p. 2).

Paragraph 8 emphasizes that Azim voluntarily chose Pakistani citizenship:

if a citizen of India has obtained on any date a passport from the Government of any other Country it should be conclusive proof of his having voluntarily acquired the citizenship of that country before that date. (ibid.)

Paragraph 9 suggested a way out by asking that he could register as an Indian citizen if he 'really desired':

That the petitioner, if he really desires to be registered as a citizen of India, after abandoning the citizenship of Pakistan, it is open to him to have himself so registered by an application made in that behalf to the prescribed authority U/S 5 of the Citizenship Act No. 5 of 1955. (ibid.)

Paragraph 10 imputes illegality onto Wajid's actions by suggesting that he intended to retain Pakistani citizenship while also extending his stay in India indeterminately: 'it appears that the petitioner has been

attempting to prolong his stay in this country indefinitely, while retaining his Pakistan Citizenship, on grounds not warranted by law' (ibid.: 2–3).

The discussions among the different ministries of the Government of India, which had also been made a party in the appeal, veered between, on the one hand, the concern over putting up an appropriate 'defence' in the court, which amounted to countering the petitioners on all counts and, on the other hand, the advisability of contesting the suit if Wajid Alam was, as he contended, 'still a minor and the son of an Indian citizen'.[22] By December 1956, the dilemma faced by the officials of the MHA seemed to have been resolved, as evident from the following comments on the state government's counter-affidavit filed before the court in September 1956,

While the statement made in the counter-affidavit sworn by the State Government in the Civil Appeal No. 643 of 1946 are generally in order, if as alleged in the plaint, the petitioner no. 2 is still a minor and his father was or his mother is an Indian citizen, it cannot be said with certainty that the petitioner no. 2 can be deemed to have ceased to be a citizen of India, even though he had come to India on a Pakistani Passport obtained by him in 1954 under Section 9(1) of the Citizenship Act, 1955, read with Schedule III to the Citizenship Rules, 1956 in so far as a minor cannot be deemed to have exercised his own willingness in acquiring the citizenship of another country. ... the Ministry of Law have agreed with our view that Indian citizens who have voluntarily acquired the citizenship of another country after 26.1.1950, shall cease to be Indian citizens under Section 9(1) of the Citizenship Act of 1955, which is retrospective in operation in so far as it provides for automatic termination of Indian citizenship in the case of any person who has between 26.1.50 and the date of commencement of the Act acquired the citizenship of another country ... under rule 30(2) of the Citizenship Rules, 1956, the authority to determine the question of acquisition of citizenship of another country is the Central Government for the purposes of section 9(2) of the Act. The jurisdiction of the civil courts to determine the question whether, when or how any person has acquired the citizenship of a foreign country is impliedly barred by Section 9(2) of the Citizenship Act, 1955, read with rule 30(2) of the Citizenship Rules, 1956, and Section 9 of the Code of Civil Procedure 1908....

... *In this connection it may also be mentioned that in that file we have decided to allow Mr. Afaq Ahmad Fatmi whose case is similar to that of Mr. Wajid Alam in the present case, to stay on in India on the ground that he was minor when he migrated to Pakistan in 1952 and his father has continued to be an Indian citizen. In the circumstances it is for consideration whether, we should ask the State Government in the present suit, if Mr. Wajid Alam is still a minor and his parents are Indian Citizens. The State Government, however, do not, expect any instructions from us in the matter* ....[23]

Responding to the note, the Under Secretary stated:

The case of Shri Afaq Ahmad Fatmi referred to in the office note of F. III Section stands on a slightly different footing from the present case in that former was filed in 1954 before the Citizenship Act, 1955, had come into force and the Court while passing judgement in the case also did not take into account the provisions of the Act. The present civil appeal has on the other hand been filed after the coming into force of the Citizenship Act 1955 and Citizenship Rules 1956, made thereunder. *Therefore, even though Shri Wajid may also be a minor, and it may be difficult to establish that he had 'migrated' to Pakistan, the fact that he has taken out a Pakistani Passport can be justified as the basis for our holding that he had acquired Pakistani citizenship in the light of provisions 9(2) of the citizenship Act, 1955, and rule 30 of the Citizenship Rules 1956 read with paragraph 3 of Schedule III thereto.*

... I agree that we should consult the Ministry of Law in this case. My own view is that we have a strong case to contest this judgement. For one thing, we have clearly laid down under our rules, which are of a statutory nature, that the holding of a passport of any other country would be sufficient evidence to hold that the person concerned has become a citizen of that country. *The intention of this rule was to exclude the jurisdiction of courts in all such cases.* In another case, the question whether a minor can be regarded as having ceased to be an Indian by virtue of migration to Pakistan under the provisions of Article 7 of the Constitution, is not quite free from doubt. Our view, however, is that Article 7 of the constitution as it stands, does not exclude minors from its scope. To test the strength of our case, it would therefore, be better if an appeal is allowed to be filed in such a case .... (Response dated 20 December 1956 from Fateh Singh, Under Secretary, MHA, ibid.)

The Ministry of Law's suggestions under the subject heading; 'Union's defence in the application on behalf of Wajid Alam, alleged minor', were as follows:

1. Being the first case, after the enactment of the Indian Citizenship Act, and the making of the rules, in which the holder of a Pakistani passport claims Indian citizenship, this should be contested properly. Besides, the Central Government should, by a separate order communicate to the State Government, determine under Section 9(2) of the Act and Rule 30 that this person has voluntarily acquired the citizenship of Pakistan.

[22] Note dated 28 September 1956 prepared in the MHA upon receiving the notice from the High Court (ibid.).

[23] Note dated 14 December 1956 prepared in the Pakistan Section (FIII) of the MHA on the counter-affidavit filed by the Bihar Government, for further instructions from Fateh Singh, Under Secretary, MHA (ibid.).

2. It appears that the State Government has entered appearance and will have to be in charge unless the Union decides in view of its great importance that there should be a separate defence ....

3. General grounds: This application is immature. After all the applicant will have an opportunity of making these averments for what they are worth if and when he is dealt with for breach of the passport and visa regulations. In that event it will go to the criminal courts with the usual rights of appeal and revision. It is also malafide. He has been in India for some time ... only when he is cautioned that no more extension would be allowed at his end, then for the first time he sets up a new claim viz., that he is an Indian citizen and that the Pakistani Passport, the Indian visa and the renewals were all unnecessary and of no consequence. This is not a case for the application of the extraordinary jurisdiction of the High Court. On that claim being communicated to the Central Government, it has determined that he is a Pakistani citizen.

4. On merits it is to be emphasised that here we do not have simple process of his going to Pakistan, or his being already found there with the possibility of a mere inference that he has become a Pakistani citizen. Here it is a conscious and voluntary act on his part by which he has represented that he is a Pakistani citizen and has obtained a Pakistani Passport.

5. The allegation that he is a minor, if really a fact is, for what it is worth a point in his favour. But it may be met (and will have to be met in the following way. Firstly, it is not likely that he got the Pakistan passport on stating that he is a minor. However, if the age on the passport is really that of a minor, it means that Pakistan does give passports to minors as well; or assumes that a man of 12 or 13 is a major (ba'lig) under their (may be Muslim) law. Either way having asserted it, even a person, who may be a minor under our law, may not go back. One cannot be a minor for one person and one of ripe understanding for another, and have it both ways.

6. There is one important step to be taken in this (and in similar). ... This [his citizenship] has to be determined, under Rule 30, and section 9(2) of the Act. Obviously this could not have been done earlier in his case. With the Central Government's determination, it should be contended that the matter may not be agitated in the court.

7. While sending out instructions to the State Government, ... "Central Government acting under section 9(2) of the Citizenship Act and Rule 30 of the Citizenship Rules, and giving due regard to the principles of evidence contained in Schedule III, Rule 3, determines that he has acquired the citizenship of Pakistan'.

8. In my opinion, there is a reasonable chance of success. This will be precedent, and whatever the chances, should be keenly contested. (Note dated 11 January 1956, by H.R. Krishnan, Joint Secretary in the Ministry of Law, ibid.)

After receiving the note from the Ministry of Law, the Home Ministry decided to ask the state government to file another counter-affidavit

stressing the point mentioned in the Law Ministry's note, and issued an order under section 9(2) of the Citizenship Act.

While the communications among the officials of the Government of India in the two ministries were still continuing, the Bihar High Court heard the case on 26 November 1956 and dismissed the petition, on the undertaking that 'the petitioner no. 2, Shri Wajid Alam, should make an application within a week from the 26 November 1956 for Indian citizenship and the authorities will not take any action against the said petitioner for prosecution till the application is finally considered by them' (Letter dated 28 December 1956 to the Under Secretary to the Government of India, MHA, New Delhi from D.W. Pires, Additional Under Secretary, Government of Bihar, Political Department [Passport Branch]).[24] The decision of the court was conveyed by the Bihar government to the MHA in the Central government through a letter dated 28 December 1956. The issue of the order by the High Court truncated the discussions along the earlier lines and put them on a different course. As an internal communication in the MHA on 28 January 1957 shows, it was realized that an order under section 9(2) was no longer necessary, since the issue of the order

[24] Judgment, dated 26 November 1956, Judges: The Chief Justice and Justice Raj Kishore Prasad:

We do not like to express any concluded opinion on the question whether the petitioner still retains his India citizenship. We consider, however, that there is prima facie material for holding that there has been a termination of the petitioner's status as an Indian citizen. ... As we have already said, the matter is primarily one for the decision of the Central Government and we hope that Central Government would take all the relevant and proper circumstances into account determining that question. ... It was suggested by the Advocate General that petitioner no. 2 could make an application under section 5(1)to the District Magistrate for registration; and if a proper case is made out for petitioner no. 2, there is no reason why he should not obtain the status of an Indian citizenship by registration. Counsel for petitioner no. 2 states that an application under section 5(1) would be made to the prescribed authorities within a week's time. The learned Advocate General undertakes in the circumstances that till the application of the petitioners under section 5(1) is dealt with by the registering authorities, the state government would not take any action to prosecute the petitioners or to deport them from Bihar. Subject to the above observation, the application is dismissed. There will be no order as to costs.

K.V. Ramaswami
Raj Kishore Prasad
High Court, Patna, 26th September, 1956

would normally have the effect of having the registration of the person concerned under Section 5(1) of the Citizenship Act, 1955, vide Section 5(3). However, as the civil appeal petition was dismissed on the undertaking that Wajid Alam would make an application for Indian Citizenship within a week from the 26-11-56, it does not at this stage seem desirable to issue such an order. *We can of course refuse to register Wajid Alam as an Indian citizen without assigning any reason*.....I think we should send a copy of the note recorded by the Law Ministry to the State Government for their information. It will also help them in dealing with similar case in future. We may also add that the application of Wajid Alam for Indian citizenship should not be accepted but should be referred to the Central Government for orders. (Internal note dated 28 January 1957 by Fateh Singh, Deputy Secretary, MHA, ibid.)

Pursuant to this communication from the Deputy Secretary, the Under Secretary, MHA, Government of India, conveyed the same to the Bihar Government.

While the fate of Wajid Alam's application for registration as an Indian citizen is not known from the rest of the file, by early 1958, the Central government had started issuing instructions on specific queries from the states pertaining to the citizenship of people who claimed Indian citizenship and also possessed a Pakistani passport. An enquiry from the Assam government over the 'registration of persons as Indian citizens—under the Citizenship Act, 1955—of persons who are known to have voluntarily acquired the Citizenship of another country (particularly Pakistan)' cited instances where:

persons of Indian origin residing in the Indian Union from before the partition of the country who were deemed to be citizens of India by virtue of Article 5(c) of the Constitution who applied for and obtained Pakistani Passports without renouncing their Indian citizenship. Such persons also applied for registration as Indian Citizens under Section 5(1)(a) of the Citizenship Act, 1955 but they were refused registration by the registering authority concerned on the ground that Section 5(1)(a) does not contemplate registration of Pak-nationals as citizens of India. Some of these persons desire to resume Indian citizenship and have submitted applications under section 8(2) of the Citizenship Act. But the question arises whether by obtaining a Pak-Passport without renouncing his Indian Citizenship, a person can be legally held as a Pak-national, and whether a person possessing a Pak-Passport against which Indian Visa is to be renewed from time to time, tantamount to possessing dual citizenship (Letter dated 17 March 1958 from the Deputy Secretary to the Government of Assam to the Secretary to the Government of India, MHA, New Delhi. File no. 4/50/58, MHA-IC, NAI.).

It is interesting that the conditions of termination of citizenship that were laid down by the Citizenship Act of 1955 and the Citizenship

Rules of 1956, as evident from the query by the Assam government, introduced uncertainty and confusion over the dual statuses of people, and an apparent conflict between the constitutional provisions as laid down in Article 5(c) and the provisions of the Citizenship Act. The response of the Central government to the query, we are aware from the deliberations over Wajid Alam's case, emphasized three points:

(a) That an Indian citizen who obtains a Pakistani passport can be deemed to have voluntarily acquired the citizenship of that country in accordance with rule 30 of the Citizenship Rules, 1956, ... he does not therefore have dual nationality.

(b) The question of resumption of Indian Citizenship under the provisions of section 8(2) of the Act by such a person does not arise, since this section is applicable only in the case of minor children of a person who has formally renounced his Indian Citizenship by making a formal declaration under section 8(1) of the Citizenship Act.

(c) The rejection of the application for registration as an Indian citizen under section 5(1)(a) of the Citizenship Act, of a person who has become a Pakistani citizen is therefore in order. Such a person could reacquire Indian citizenship only by registration under section 5(1)(c) of the Citizenship Act, 1955 read with Section 5(3) of the Act, ... (Letter dated 24 April 1958 from the Under Secretary to the Government of India to the Deputy Secretary to the Government of Assam, ibid.)

It is interesting how a point made in the internal communications in the MHA and deleted from the final instructions sent to the Assam government is symptomatic of the concern in the ministry over retaining its discretion as well as final authority in matters concerning citizenship, vis-à-vis the state governments and the courts. Earlier, in Wajid Alam's case, the officials of the MHA contemplated rejecting his application for registration as an Indian citizen, if such an option was made available to him by the Patna High Court. While contemplating its response to the query by the government of Assam, the preliminary note prepared in the Home Ministry sought to lay down first the general principle where the legal closure to 'resumption' of citizenship could be compensated by 're-acquisition' of citizenship under the Act. It then proceeded to lay down an exception, stating, 'However, if in the opinion of the state government the case of an individual deserves special consideration *his case may be referred to us* for instructions together with full facts of the case and the state government's recommendation thereon' (Preliminary note dated 17 March 1958, MHA, ibid.).

In many ways, the interregnum between the commencement of the Constitution and the enactment of the Citizenship Act was not only a period of indeterminate citizenship, it was also a period during which

the respective powers of institutions to determine citizenship were being disputed and simultaneously marked out. In several cases which came up before the Supreme Court in the 1960s concerning people who had travelled between the two countries after the commencement of the Constitution, the primacy of the Citizenship Act, which manifested the sovereign power of the Parliament to legislate on the issue of citizenship, and the subsequent empowerment of the Central government to decide on matters of citizenship vis-à-vis the authority of the courts, came under scrutiny. In cases such as *Izhar Ahmad Khan* v. *Union of India* (1962) and *State of Uttar Pradesh and Others* v. *Shah Mohammad and Another* (1969), the Supreme Court decided on disputes over section 9 of the Citizenship Act, and whether the claims to Indian citizenship could continue to be made in the courts. This basically involved going into the question of whether the Parliament's paramount power under Article 11 of the Constitution to enact on those matters of citizenship which were not covered by the Constitution meant that the Act be seen as providing a 'procedure different from the one which obtained before' (*State of Uttar Pradesh and Others* v. *Shah Mohammed and Another*), or that the Act needed to be read in continuation with constitutional provisions. Indeed, section, 9 of the Citizenship Act dealing with 'voluntary' renunciation of Indian citizenship was frequently disputed in the courts. The notion of 'continuity' between constitutional provisions and the legal framework led to detailed discussion in the courts on the contexts of acquisition/renunciation, as to 'whether, when and how an Indian citizen had acquired the citizenship of another country' (ibid.). However, on the question 'whether section 9 of the Citizenship Act, which came into force in December 1955, would be applicable to a suit which was pending on that date' (ibid.), which basically entailed going into the question of whether section 9 could retrospectively truncate a person's pending claim to citizenship being examined by a court, the Supreme Court took a two-pronged approach. While it saw the Citizenship Act as being consonant with the Constitution, in other words, taking over from where the Constitution left, the Supreme Court also recognized that the Act provided a distinct procedure for the determination of citizenship in which the Central government had been given the overriding power of decision making.

In *Abida Khatoon and Another* v. *State of U.P. and Others* (1963 All 260), for example, the Supreme Court decided that the Citizenship Act did not retrospectively take away the claims of a person for citizenship pending in the court. In the cases *Izhar Ahmad Khan* v. *Union of India* decided on 16 February 1962 (AIR 1962 SC 1052), and the *State of Uttar Pradesh and Others* v. *Shah Mohammad and Another*, decided by the Supreme Court on 13 March 1969 (1996 AIR 1234, 1969 (3) SCR 1006, 1969 (1) SCC 771), on the other hand, the court made this claim subject to the provisions of the Citizenship Act and the authority of the Central government as the final arbiter. The Izhar Ahmad Khan case brought together three writ petitions—of Izhar Khan, who resided in Bhopal, where he ran a restaurant and was enrolled as a voter; of Syed Abrarul Hassan, also a resident of Bhopal who went to Pakistan in 1951 to visit an ailing relative; and of Habib Hidayatullah, who sailed for Basra from Bombay in 1950 and went to Karachi thereafter, where he lost his Indian travel papers. In *State of Uttar Pradesh and Others* v. *Shah Mohammad and Another*, Shah Mohammad, who was born in India on 3 July 1934, went to Pakistan in October 1953, obtained a visa from the Indian High Commission to come to India in July 1953, and applied for permission for permanent settlement in 1954. Shah Mohammad had filed a writ petition before the Allahabad High Court in 1955, claiming that he was born in India of Indian parents who were residing in India, was a minor when he was persuaded to go to Pakistan, and that he did not go there with the intention of settling there permanently. In consonance with the position that it had taken earlier in the Izhar Khan case, the Supreme Court made the following decision in Shah Mohammad's case:

> Thus the first point which has to be decided is whether s. 9 either expressly or by necessary implication has been made applicable to or would govern pending proceedings. The language of sub-s.(1) is clear and unequivocal and leaves no room for doubt that it would cover all cases where an Indian citizen has acquired foreign nationality between January 26, 1950 and its commencement or where he acquires such nationality after its commencement. The words or has at any time between the 26th January 1950 and the, commencement of this Act voluntarily acquired the citizenship of another country would become almost redundant if only prospective operation, is given to s. 9 (1) of the Act (*State of Uttar Pradesh and Others* v. *Shah Mohammad and Another*).

The Supreme Court upheld the Parliament's sovereign power to legislate on the matter, and also the overriding role of the Central government in decision-making pertaining to citizenship. It argued that Article 11 of the Constitution had 'preserved' the above stated powers of the Parliament 'in express terms' and formed the source form which the Parliament could claim competence to legislate on all issues concerning the acquisition and loss of citizenship. In particular, the Citizenship Rules framed under the Citizenship Act, allowed the Parliament to make provisions for a forum where disputes over whether or not a person had

acquired citizenship of another country could be resolved. The Court identified three contexts which could lead to loss of Indian citizenship by acquisition of foreign citizenship:

1. Indian citizens who voluntarily acquired citizenship of a foreign country prior to the commencement of the Constitution;
2. Indian citizens who voluntarily acquired the citizenship of another country between 26 January 1950 and 30 December 1955, which was the date of commencement of the Citizenship Act; and
3. Indian citizens who voluntarily acquired foreign citizenship after the date of commencement of the Citizenship Act. Cases under the first category, the Court clarified, were to be dealt with under Article 9 of the Constitution, while the second and the third categories fell under the purview of Section 9 of the Citizenship Act of 1955. All questions about whether, when or how an Indian citizen acquired the citizenship of another country was to be determined by the Central government under the provisions of Section 9 of the Citizenship Act, read with Rule 30 of the Citizenship Rules.

Significantly, the counsel for Shah Mohammad argued that the application of Section 9 of the Citizenship Act, on cases of acquisition of citizenship of a foreign country prior to the commencement of the Act, as had been done in the case of his client, contravened Article 21 of the Constitution. Loss of citizenship, he argued, was a 'serious and grave matter involving loss of personal liberty', which was protected by Article 21 of the Constitution. While conceding that the Constitution guaranteed life and personal liberty, the Court pointed out that Article 21 allowed deprivation of life and personal liberty of an individual, in accordance with the procedure established by law. Before the commencement of the Act, disputes pertaining to loss of Indian citizenship by acquisition of citizenship of a foreign country were decided following the ordinary procedure of determination by civil courts. The Citizenship Act of 1955, which gave effect to the constitutional provision under Article 11, was an affirmation of the legislative competence of the Parliament in matters pertaining to citizenship, and its pre-eminent power to regulate the right of citizenship by law. Section 9 of the Citizenship Act, was therefore, in the opinion of the Court, a demonstration of the constitutional provision, not its contravention, and could not therefore, be construed as unconstitutional. It was therefore, perfectly within the powers and competence of the Parliament, 'to legislate about cases of persons belonging to categories 2 and 3'(*State of Uttar Pradesh and Others* v. *Shah Mohammad and Another*), and 'in exercise of its sovereign power' (ibid.) it could lay down a 'procedure different from the one which obtained before [that is, before the commencement of the Citizenship Act]. The new

procedure would itself become the procedure established by law within the meaning of Article 21 of the Constitution' (ibid.). It was not possible therefore, in the Court's opinion, to hold that the application of Section 9 of the Citizenship Act and Rule 30 of the Citizenship Rules to a case, in which a suit had been instated prior to the commencement of the Citizenship Act, would be a contravention or violation of Article 21 of the Constitution. The Court affirmed, moreover, that the final power to 'determine' cases covered under Section 9 of the Citizenship Act would rest with the Central government. Only those matters, which were not covered by Section 9, could be brought before the courts. The Supreme Court allowed the appeal of the government of Uttar Pradesh thus, affirming the complete authority of the political executive in matters arising out of section9. In doing so, it set aside the order of the Allahabad High Court which had ruled that a retrospective application of Section 9 of the Citizenship Act would contravene with the fundamental rights of citizens.

The interregnum between the enforcement of the Constitution and the enactment of the Citizenship Act of 1955 was a period of indeterminate citizenship. The conferences between the two countries made possible a framework whereby movement across borders could take place. Depending on the nature of the movement—restoration, relocation, rehabilitation, return, settlement, etc.—and who moved—children/minors, prisoners, abducted women, women marrying Indian men, minority populations, etc.—a different possibility for citizenship was offered to each. While the Citizenship Act of 1955 intended to deal with the conditions of acquisition, termination, and deprivation of citizenship, in the contexts which obtained after independence, much of the concerns surrounding citizenship—as evident from the internal communications in the MHA which dealt with issues of citizenship, in consultation with the Ministry of Law, the Ministry of Rehabilitation, and the Election Commission, in some cases—show how the contexts of Partition continued to dominate and determine decisions pertaining to citizenship. Issues of loyalty, which were related to religion, constituted a basis for executive discretion, exception, and arbitrariness even where law permitted admission into citizenship. Yet, the liminal spaces of indeterminate citizenship at the commencement of citizenship also saw ways by which the closures, which were brought in by the constitutional deadline, could open up to admit people into citizenship. However, this opening up was on differential terms, so that the hierarchy of citizenship continued to unfold through the constitution of precise categories of citizenship by birth, descent and registrati

2

The Citizenship (Amendment) Act, 1986

The 'Politics of Place-making' and Suspect Citizenship

As discussed in the introductory chapter, the code of citizenship marks out the 'other', continually reproducing and re-inscribing it within the field of citizenship, in a relationship of contradictory cohabitation. This relationship is, however, not one of exclusion or opposition but one of forclusion (Spivak 1999; Balibar 2003 in Mezzadra 2006), where the outsider is inextricably and constitutively woven into delineations of citizenship. The outsider is not only crucial for the identification of the citizen, but quite like a 'virtual' image, it reflects the citizen, as a constant corroborator of the citizen's authenticity, without itself becoming one. This relationship of forclusion is reproduced continually in law and through judgments, so much so that the outsider persistently cohabits and authenticates the citizen's space in an enduring relationship of incongruity.

In this chapter, we shall focus on another significant moment of the unfolding of the Citizenship Act in India—the Citizenship (Amendment) Act, 1986—to examine the ways in which changes in citizenship laws manifested a politics of place-making, marking out of ethno-spaces, and the setting in motion of a process whereby citizenship's association with descent is affirmed. It is worth repeating here that the amendment to the Constitution in 1986 pertained to the question of citizenship in Assam and the identification and sifting out of the 'illegal' migrant. In so far as the IMDT Act and identification of the 'illegal migrant' is deeply imbricated in issues of citizenship in Assam, which was propelled onto the national political stage in the 1980s with the

Assam movement,[1] this chapter will examine the delineation of citizenship as it unfolded in the course of the movement and through the Assam Accord,[2] and the manner in which it continued to be enmeshed in the electoral processes in Assam and in wider national politics.

National political space, it is proposed, is a differentiated space that is ordered simultaneously through the politics of 'nationalization of space' and 'place making' (Baruah 2005: 4–5). The Assam movement set in motion a process whereby a subnational identity, distinct from and yet consistent, coexistent, and concurrent with an Indian nationality, was sought to be constructed. The construction of this distinct yet cohabiting subnational identity was contingent on the construction of the figure of the 'migrant alien' as disruptive of both the Assamese ethno-space and the national political space. The 'disruptive migrant' figured, however, in different ways in the complex configuration of political forces and power relations between the Centre and the state. If the IMDT Act and the election to the state Assembly in the same year (1983) manifested the tensions in the processes of nationalization

[1] The Assam movement refers to the prolonged struggle in the state of Assam in the 1980s, which had at its core the issue of outsiders in Assam, in particular the government's policy of admission and enfranchisement of 'foreigners' or 'illegal aliens' from East Pakistan and later Bangladesh. The inflow of people into Assam from the adjoining areas of East Bengal took place in the early decades of the twentieth century as Muslim peasants from Mymensingh, Pabna, Bogra, and Rangapur came to Assam and settled in Goalpara, Nowgong, Kamrup (then Barpeta district), and Darrang, and later in North Lakhimpur district, occupying most of the wastelands. After independence and the setting up of the two nation-states, the influx into Assam of East Pakistani immigrants continued across what remained a fluid border. In 1971, in the course of the liberation war in Bangladesh, several lakhs of Hindu and Muslim refugees fled to Assam. Within Assam, the presence of large numbers of 'foreigners' instilled a growing sense of insecurity. Closely allied to the foreigners issue was the growing disgruntlement with unemployment and poverty, which persisted despite the state being rich in natural resources, including oil, because of what the people of Assam believed to be an exploitative relationship of dependency within the Indian Union.

[2] The Assam Accord, signed on 15 August 1985 between Prime Minister Rajiv Gandhi and the leaders of the Assam movement, was a broad settlement that included significant cultural and economic development concerns, promising 'constitutional, legislative, and administrative safeguards ... to protect, preserve, and promote the cultural, social, linguistic identity and heritage of the Assamese people' and 'all round economic development' of the state.

of space, the 1985 accord between the Indian government and the leaders of the Assam movement and the 1986 amendment in the Citizenship Act of 1955, which inserted a category of citizenship addressed exclusively to Assam, saw the emergence of a negotiated consensus. The tenuousness of the consensus unfolded over the years, culminating in a petition by a former president of the All Assam Students Union (AASU) in 2000 to the Supreme Court and the Court's subsequent scrapping of the IMDT Act in a judgment delivered several years later in July 2005.

This chapter will, therefore, examine the contests over the IMDT Act to show how the illegality/alien-ness of the migrant was central to the construction of the Assamese identity; and how the illegal migrant and the IMDT Act figured in precarious relationships of consensus and conflict, depending on the nature of political/electoral contests between the central and the state governments. In the process, the chronosophy[3] of citizenship in Assam remained indeterminate and ambivalently defined, having ramifications for the manner in which the legal and philosophical contours of citizenship in India were envisaged. Moreover, while the migrant as the constituent outsider is notionally constant, the unfolding of the relationship between the migrant and the citizen shows transitions and temporal variations, so that the relationship of incongruity is sometimes precise and emphatic and, at others, opaque and blurred. The second part of the chapter will examine the debates on citizenship of the Chakmas, who had migrated from Bangladesh in the 1960s and were rehabilitated in Arunachal Pradesh by the Indian government. The competing claims to protection by the Arunachalis and the Chakmas generated distinct idioms of citizenship. While the Arunachalis took recourse to constitutional protection, the Chakmas pressed for recognition of their substantive membership as citizens

[3] As mentioned in the Introduction, first used by Krzysztof Pomian (1977), 'chronosophy' refers to the assumptions we make about the relationship between the past, present, and future (Wallerstein 1991: 178). The social sciences have been dominated by the linear chronosophy suggested in the theory of progress, depicting an inevitable and irreversible ascending curve. Wallerstein suggests an alternative chronosophy, which he calls the theory of possible progress, where historical systems marked by cyclical rhythms and secular trends are interspersed with successive moments in which major historical choices have occurred. In this work, the word chronosophy is used in Wallerstein's sense to look at the trajectory of citizenship in terms of a historical relationship where transitions are not part of continuous historical process, but moments of historical choices.

transcending the marginality which was attributed to them through legal protection as a 'refugee' under the 'care' of the state.

After the setting up of the two nation-states, the influx into Assam of what now became East Pakistani population continued across what remained a porous eastern border. As pointed out in the previous chapter, unlike the exchange and flow of population on the western border, where the constitutional deadline for migrants from Pakistan to claim citizenship in India was treated as final, the eastern border remained permeable for some time.[4] Following the post-Partition riots and migration of (Hindu) minorities from East Pakistan, the Nehru–Liaqat Pact prescribed that refugees returning home by 31 December 1950 would be entitled to get back their property, effectively pushing the date beyond the Constitutional deadline. The Pact also created a fiction that once calm was restored, the refugees would return to their homes across the border. In 1971, in the course of the liberation war in Bangladesh, several lakhs of Hindu and Muslim refugees fled to Assam. In a joint declaration on 8 February 1972, the Prime Ministers of the two countries assured 'the continuance of all possible assistance to the Government of Bangladesh in the unprecedented task of resettling the refugees and displaced persons in Bangladesh' (Baruah 1999: 119). While not all refugees returned to Bangladesh, more migrants continued to cross the border into Assam and other parts of India in search of livelihood. Within Assam, the presence of large numbers of 'foreigners' instilled a sense of unease at the change in the demography, language, and access to resources, primarily land and employment, around which a powerful popular movement wove itself.

[4] In her study of 'refugee women', drawn from the recollections of women and families coming out of the Partition of Bengal, Gargi Chakravartty (2005) shows how, despite the violence, rape, abduction, and killings that engulfed areas like Noakhali and Tippera (October 1946) and the massacre of Hindus and abduction of women in Calcutta (16–19 August 1946), which instilled deep insecurity among Hindus in East Bengal, they thought that Partition (like Bengal's earlier Partition in 1905) would be a temporary phenomenon. They did not, in general, think of leaving their ancestral homes and migrating permanently to the western side. The total loss of status of middle class Hindus, continuing insecurity, discrimination and repression by the state, and, finally, the riots in 1950, became the reason for their steady migration to India. From February to April 1950, streams of refugees (10,000 refugees every day, according to reports)—men, women, and children—arrived in West Bengal and the Agartala border in Tripura. Sealdah station, in particular, was flooded with 'dispossessed and unattached women', who had been sent off by their men in East Pakistan to seek security in India (Chakravartty 2005: 7–47).

In the 1980s, following the Assam Accord, the principle of 'different yet equal' or differentiated citizenship was given legal recognition through an amendment in the Citizenship Act in 1986. The amendment introduced a sixth category of citizenship in India, which was to apply exclusively and exceptionally to Assam. While the amendment may well be construed as a moment of encompassment, since it opened up within the framework of universal citizenship a space for the articulation of difference, addressing concerns around the determination of citizenship in the specific context of Assam, yet, closure as a differential experience of citizenship followed closely. Unlike its incorporation in the Constitution of India at the commencement of the Republic, in which migration provided the condition of passage into citizenship, migration in 1986 was explicitly associated with illegality.

The Citizenship Act, 1955 amended in 1986, added Article 6A, which made way for a sixth category of citizenship along with birth, descent, registration, naturalization, and by incorporation of foreign territory into India. The amended Act laid down that (1) all persons of Indian origin who came to Assam before 1 January 1966 from a specified territory (meaning territories included in Bangladesh) and had been ordinarily resident in Assam are considered as citizens of India from the date unless they chose not to be, (2) (a) person of Indian origin from the specified territories who came on or after 1 January 1966 but before 25 March 1971 and have been resident in Assam since and (b) have been detected in accordance with the provisions of the Foreigners Act, 1946 and Foreigners (Tribunals) Orders, 1964 (c) upon registration, will be considered as citizens of India, from the date of expiry of a period of ten years from the date of detection as a foreigner. In the interim period, they will enjoy all facilities, including Indian passports, but will not have the right to vote.

With the signing of the Assam Accord, we can see the confirmation of a hierarchized model of citizenship constituted by the 'universal we', whose claims to citizenship was beyond any legal disputation. The universal 'we' was superimposed on residual citizens, whose citizenship was rendered ambivalent by their linguistic identity or their religion. This ambivalence was sought to be resolved legally by conferring deferred citizenship onto some (those who arrived between 1966 and 25 March 1971), through the determination of their legality by the Foreigners Act. The rest, that is, those who arrived in India after 25 March 1971, were aliens, and the illegality of their presence was to be confirmed by the IMDT Act. In actual practice, however, since both the Foreigners Act and the IMDT Act were to apply simultaneously and the two prescribed different modes of determining citizenship, in a context of consistent influx of immigrants from Bangladesh, the residual citizens continue to occupy a zone of perpetually indeterminate citizenship and suspect legality. On the other hand, as far as the mode of identification of 'illegal migrant' or 'foreigner' was concerned, the IMDT Act was more 'protective' of the interests of the immigrant, since it shifted the responsibility of proving legal residence from the person 'identified' to a 'prescribed authority' and demanded a locus standi from the applicant identifying the 'illegal migrant'. Thus, even as the 1986 amendment introduced an exception into the legal-formal frameworks of citizenship in India, expressing a legal recognition of the special circumstances that existed in Assam, the Central government retained the power to determine illegality on its own terms. It is not surprising, therefore, that the Assam Accord recorded the 'difficulties expressed by the AASU/AAGSP regarding the implementation of the IMDT Act, 1983' in Section 5, which dealt with the 'foreigners' issue.

The IMDT Act was scrapped in 2005 by the Supreme Court, removing what was largely being seen in Assam as an anomalous and unfair exception. In its judgment, delivered on 12 July 2005, almost five years after a petition seeking its repeal was made by Sarbananda Sonowal, a former President of the AASU, former Member of Legislative Assembly (MLA) from the Asom Gana Parishad (AGP), and Member of Parliament (MP), a three-judge Supreme Court bench declared certain provisions of the IMDT Act, 1983 as unconstitutional. While the grounds on which the Supreme Court declared the Act unconstitutional were specifically questions of legal procedure, the general principles which were articulated in the process have ramifications for the way in which the terms of citizenship get defined and interpreted. Thus, while declaring the IMDT Act unconstitutional, the court described migration not only as 'illegal' entry into foreign territory, but as an *act of aggression*, arguing within a discursive framework that makes for a bounded notion of citizenship, with the policing of boundaries and the determination of citizenship construed as a significant manifestation of state sovereignty. Moreover, the judges marked out the migrant not only on account of being an alien, but also on the count of being a Muslim, the latter inevitably associated with Islamic fundamentalism and construed as a threat to the demographic profile of the country (read Hindu) and to national security. Manifesting the political–ideological contexts of the period, the judgment discussed the demographic shifts in Assam, not in terms of the linguistic

profile, as was the case earlier, but in terms of the religious profile of the state, emphasizing the increase in the Muslim population and the threat it posed not just to Assam but to the whole of India.

The judgment may be read as being embedded in the dominant frameworks of nationalism which cast a web of suspicion around all Bengali-speaking Muslims in Assam and the rest of the country. It may also be seen as a consummation of institutional and state practices that had been unfolding from the 1990s and manifested in the vicious cycle of dispossession, dislocation, disenfranchisement, and violence against Muslim residents of Delhi slums on the assumption that they were illegal migrants. In response to the Delhi High Court's order in *Chetan Dutt* v. *Union of India and Others* (2001),[5] which stipulated that 100 Bangladeshis had to be sent back to Bangladesh every day, the police in Delhi began 'deporting' Bangladeshis with a renewed vigour, deporting who they thought of or identified as Bangladeshis, who could not afford to bribe them, or could not provide proof of property ownership or residence necessary to secure their release.

Moreover, even as the Assamese exception was being spelt out in citizenship law laying down the chronological boundaries of belonging, almost imperceptibly, another amendment in the citizenship Act was marking a significant shift in the ideological basis of citizenship in India, a shift which was to consummate with the Citizenship Amendment Act of 2003.

THE MAKING OF THE ASSAMESE EXCEPTION

The intricacies of the Assam movement, in particular the manner in which the 'collective *expression* of community perceptions and interests in the region' (Dasgupta 1998: 190) have unfolded, have formed the subject of substantial academic writings (Baruah 1986, 1999, 2005; Barbora 2002; Dasgupta 1990, 1998; Guha 2002; Hazarika 1994; Misra 2000, 1988; Misra and Misra 1996). This section examines the debates from the vantage point of citizenship, especially as they have accumulated around the IMDT Act. The distinctive nature of Assamese citizenship that the Assam movement seemed to foreground was based on the principle of 'different yet equal'. 'Difference' was articulated initially in terms of linguistic/cultural distinctiveness, which in the later years of the movement, grounded itself in unequal development and discrimination emerging from the differential terms

[5] Civil writ no. 3170/2001, Delhi High Court, the writ petition is pending.

of inclusion of Assam into the national–political. If the former was grounded in issues of an Assamese ethnic identity,[6] the latter chose to prioritize issues of development and access to resources.[7] At the basis of both, however, was the crisis in citizenship as it was hitherto being articulated and experienced in Assam as a culturally and linguistically distinct state cohabiting with the larger nation-state citizenship. Yet, the model of citizenship that the Assam movement seemed to invoke was a replication of the universal form that it was seeking to roll back in its own relationship with the Indian state. These contradictions played out in the articulation of citizenship at the national and state levels and within the state between the 'ethnic' Assamese and the Bodos, the Assamese and the Bengalis, the Assamese and the tribals, etc. The Assam movement, as the campaign of the 1980s came to be called, had at its core the issue of outsiders in Assam, in particular the government's policy of admission and enfranchisement of 'foreigners' or 'illegal aliens' from East Pakistan and later Bangladesh.

[6] Dasgupta writes about different stages in the collective expression of Assamese identity, coinciding with the various phases of 'boundary shuffling' (Dasgupta 1998: 190). Till 1874, Assam perceived itself as an appendage to Bengal and the continuation of the power and influence of the Bengali population, even after the redrawing of state boundaries in 1906 and 1912, was resented by the Hindu Assamiya speakers (Hazarika 1994: 45). Independence and the incorporation of the Muslim-majority district of Sylhet into East Pakistan reduced the Bengali Muslim factor in Assamese politics and made way for an ethno-linguistic Assamese exclusivism (Dasgupta 1998: 192), which was secured through economic and social mobility and the enforcement of the Assamese language in public sector jobs. The leadership for Assamese autonomy did not come from the ruling parties—the Congress and the Janata (ibid. 1990: 68). In the late 1970s, it came from the AASU, a coalition of 11 groups called the All Assam Gana Sangram Parishad (AAGSP) (Dutta 1988: 29–49) and literary authors represented by the Asom Sahitya Sabha (Assam Literary Association). Beginning in 1979, AASU and AAGSP leaders concentrated on the issue of 'foreigners', in particular the Muslim immigrants from East Pakistan and later Bangladesh and the inflation of electoral rolls. The issue evinced substantial popular support from Assamiya speakers, including the earlier Muslim settlers, and led to the formation of a new political party, called the AGP, which won an impressive victory in the general elections of December 1985 (Dasgupta 1998: 192–3).

[7] In the late 1980s, the United Liberation Front of Assam (ULFA) described India's relationship with Assam as colonial and demanded that multinational and Indian-owned tea companies do more for the development of the state (Baruah 2005: 125).

Article 11 of the Constitution of India gives the Indian Parliament paramount power to regulate and determine citizenship, which is a central subject. The political and legal manoeuvrings that unfolded in the 1980s, through the Assam Accord (1985) and the amendment in the Citizenship Act in 1986, show that the Central government projected the issue of 'foreigners' and 'illegal migrants' in Assam as specifically 'Assamese' anxiety, not involving 'national' concerns. In an attempt to delegitimize the movement around the 'foreigners' issue as subversive of the nation-state, the government sought to smother it through constitutional means—elections—and repressive measures like the National Security Act, 1980, the Disturbed Areas Act, 1955, and the Armed Forces Special Powers Act, 1958. If one looks at the negotiated settlement that emerged in Assam, one sees that in the process of arriving at the accord, the Central government was playing diverse and contending roles, all of which aimed at asserting its sole monopoly over deciding matters of citizenship. While the Assam Accord apparently projected the government's alertness to 'genuine apprehensions of the people of Assam' and held out the promise of 'constitutional, legislative and administrative safeguards ... to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people',[8] it ultimately affirmed the Central government's constitutional role as the final arbiter in matters concerning citizenship. At the same time, even as the accord put in place exceptional provisions for citizenship in Assam, the enactment of the IMDT Act in 1983, and its continued application in Assam after the signing of the accord shows that irrespective of the commitment to the apprehensions of the people, the government was staking out for itself a moral high ground by projecting itself as the legal/constitutional protector of the 'human rights' of the immigrant population. Thus, even as it gave way to the demands of the Assam agitation on the issue of 'foreigners', as the Assam Accord and the Citizenship (Amendment) Act, 1986 bear out, through the IMDT Act, the Central government retained for itself exclusive claims over the legal resolution of the issue of citizenship.

Before examining the various provisions of the IMDT Act and elaborating on why it became a festering issue in the resolution of the citizenship question in Assam, it is important to draw attention to the fact that the foreigners' issue became a significant political concern because of its implication for the electoral processes in Assam. While anxieties

[8] Assam Accord, 1985.

around the presence of foreigners and illegal migrants in Assam remained more or less subterranean in the years after independence, a prolonged movement around the issue was set off by a by-election held in 1979 in Mangaldai parliamentary constituency following the death of the sitting MP. The revision of the voters' list for the by-election drew attention to the extraordinary rise in the number of voters since the previous election. In the process of revision, objections were raised against 70,000 people, of whom 45,000, constituting about one-sixth of the total electors, were declared foreigners under the Foreigners Act, 1946 and the Rules of 1964. The AASU organized a mass rally on 6 November 1979 in Guwahati, demanding the immediate settlement of the foreigners' issue. The rally, led by Prafulla Kumar Mahanta and Bhrigu Kumar Phukan, marked the onset of a prolonged struggle. In a memorandum submitted to the Prime Minister of India on 2 February 1980, the AASU appealed to both the Central and state governments to act 'before it was too late' to protect Assam against 'the harmful effects of continuous immigration', which was 'evident in every sphere of life', had changed the composition of the electorate, and had gathered enough strength to influence political decisions (Barpujari 2006: 3–4). The demographic changes in the state were also recognized by the Chief Election Commissioner (CEC), S.L. Shakdher. In a speech to state-level election officers before the general election in 1979, Shakdher referred to the census records of 1971 to report the 'alarming situation' arising out of the unprecedented inflation in electoral rolls in Assam.[9] Shakdher stated:

> I would like to refer to the alarming situation in some states, especially in the North Eastern region, wherefrom reports are coming regarding large-scale inclusions of foreign nationals in the electoral rolls. In one case, the population in 1971 census recorded an increase as high as 34.98 percent over 1961 census figures and this was attributed to the influx of large numbers of persons from foreign countries .... I think it may not be a wrong assessment to make that on the basis of increase of 34.98 percent between two census, the increase likely to be recorded in the 1991 census would be more than 100 percent over the

[9] See Weiner (1983: 282–5) for a discussion on and estimation of the growth in the population of Assam and Baruah (1986) for the difficulty of estimating the number of foreigners/immigrants in Assam. Baruah identifies the reasons as the absence of official records, the problems with using the census data (no census data for 1981 due to political turmoil as well as misreporting by respondents on questions of birth place and language), and estimates from the natural rate of population growth in Assam, which does not make a distinction between immigrants from within and outside India (ibid., 1189–90).

1961 census. In other words, a stage would be reached when that state may have to reckon with the foreign nationals who may in all probability constitute a sizeable percentage if not the majority of population in the state.[10]

The AASU, supported by several regional parties and major literary associations of Assam, demanded the screening of the electoral rolls the Election Commission had prepared in order to eliminate illegal migrants, calling for a civil disobedience movement on the issue. The 'anti-foreigner' movement spilled over into the neighbouring states of Manipur and Tripura, turned violent, and targeted other non-Bengali migrants including Biharis, Punjabis, and Nepalis (Weiner 1983: 286–7). The Election Commission cancelled the elections in 12 out of Assam's 14 parliamentary seats, with the result that following the 1980 parliamentary elections, Assam remained unrepresented or underrepresented in the Lok Sabha for almost the entire duration of the Assam movement.

In the meantime, the state government remained unstable, with short periods of Congress (I) governments, interspersed with 'president's rule'. In March, 1982, the state government elected in 1978 was dissolved and the state was once again placed under President's rule, which in turn necessitated adherence to the constitutional requirement of holding elections within a year of its imposition. The elections to the state government were eventually held in February, 1983 amidst unprecedented violence. Simultaneously, elections to the legislative assembly and the twelve Parliamentary seats that remained vacant from the previous elections were held. Significantly, concerns were raised that conditions in Assam were not conducive for the polls and could deepen the existing divide. While the Election Commissioner held that if a legal alternative was available, he would postpone the election,[11] the Central government persisted with the policy of snuffing out the movement in Assam 'politically' through the electoral process. The AASU and the AAGSP decided to boycott what they considered to be an illegal election, since the issue of 'who was entitled to vote', which was at the crux of the movement, remained unresolved.

Elections were conducted under extraordinary circumstances and severely tested the election machinery (Rao 1983). Parts of Assam,

[10] Quoted from a speech at the Conference of the Chief Electoral Officers of States held on 24 September 1978 in Ootacamund, Tamil Nadu (Hussain 1993: 102).

[11] 'There was no option', 1983, *India Today*, 15 March.

specifically areas in Sibsagar district, were declared 'disturbed area[s]' and many AASU and AAGSP activists were detained. A blanket ban under the Assam Special Powers (Press) Act, 1960, was imposed for two months and paramilitary forces were deployed throughout the state.[12] The election process was steeped in unprecedented violence, so much so that it earned the epithet of the 'bloody election'.[13] The 1983 elections brought to power a Congress (I) government led by Hiteshwar Saikia, and the Congress (I) at the Centre and in the state sought to wrest from the Assam movement its claims over articulating the citizenship issue in the state. The passing of the IMDT Act in 1983 was a manifestation of these competing claims.

The IMDT Act, passed by the Central government at a time when Assam continued to be largely unrepresented as a result of an election boycott, put in place legal procedures that made it 'difficult' to identify an 'illegal' migrant. Thus, even as the agitation in Assam pressed for sieving foreigners from Assam, the Central government, through the IMDT Act, demonstrated its exclusive claims over the resolution of the citizenship question in Assam and elsewhere in India. In the process, it also carved out for itself a moral high ground by projecting itself as the legal/constitutional protector of the immigrant population.[14] While the Act was expected to extend to the whole of India, its applicability to the state of

[12] 'Assam: What Kind of Election?', 1983: 42–3; 'Election at Bayonet-Point', 1983; 'Fraud in Assam', 1983.

[13] Refers to the massacre in Nellie, a region along the southern banks of the Brahmaputra and 45 kilometres from Guwahati inhabited by Muslim migrants from Mymensingh, where, according to official figures, 1,383 men, women, and children were killed. Officials estimated the combined death toll at Nellie and elsewhere at more than, 4,000, while almost three lakh people sought shelter in refugee camps (Weiner 1983: 281).

[14] Leaders of the Muslim community in Assam believed that the IMDT Act 'was necessitated to provide some safeguard to the bonafide citizens belonging to a particular minority community who were being harassed indiscriminately when the anti-foreigners movement spearheaded by the AASU was at its peak from 1979. Even a distinguished personality like Syed Abdul Malik, who has contributed much to Assamese literature and has been the recipient of the Sahitya Akademi Award was not spared. Ultimately, leaders of the community were able to impress upon the Government at the Centre headed by Indira Gandhi the need for some judicial safeguard to these people through a new law'. This was H.R.A. Choudhury, Senior Advocate, elaborating on the context in which the IMDT Act came, in an interview with Indrani Barpujari. Cited in Indrani Barpujari's report on the IMDT Act (2006: 7).

Assam was immediately notified, meaning that it took effect immediately in the state of Assam, coming into force on 15 October 1983. The Act claimed that:

> a good number of foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on and after the 25 day of March [1971], have, by taking advantage of the circumstances of such migration and their ethnic similarities and other connections with the people of India and without having in their possession any lawful authority to do so, illegally remained in India.[15]

It may be pertinent to identify at this point the significant differences between the Foreigners Act, 1946, which had been used to settle disputes on the identification of 'outsiders' in India, and the IMDT Act, 1983.[16] Under the IMDT, Act, an illegal migrant was a person who had entered India on or after 25 March 1971, was a foreigner as defined under the Foreigners Act, 1946, and did not possess a valid passport or other travel documents. The Act was designed to override the provisions of other related laws. Under Section 5(1) of the IMDT Act, the Central government was authorized to set up tribunals that could take up 'references' and 'applications'. Thus, in response to a 'reference' from a person identified as a foreigner under the Foreigners Act, the tribunal gave the individual 30 days to furnish proof in his/her defense. On the other hand, an authority making an 'application' (declaring someone a foreigner) was asked to furnish a report with evidence substantiating its allegations. Making an application 'alleging' illegality was also made a more 'responsible' act in as much as only a person residing in the vicinity could apply, supported by corroborating affidavits submitted by two more persons. While anyone could petition the tribunal regarding a third person who was said to be an illegal migrant, the tribunal would henceforth not entertain such an application unless the person in relation to whom the application was made was 'found' to reside or did reside within 3 kilometres from the place of residence of the petitioner. In addition, every application had to be accompanied by corroborating affidavits sworn by at least two other persons who also resided within the 3-kilometre radius, accompanied by a fee of Rs 100. Moreover, both the reference and the application could be made to the tribunal only

[15] Preliminary chapter, IMDT Act, 1983.

[16] The process of identifying illegal migrants under the IMDT Act applied only to those persons who had migrated into Indian territory *on or after 25 March 1971*.

within the particular territorial jurisdiction in which the alleged 'illegal migrant' resided. Thus, the procedures prescribed for the process of identification under the IMDT Act (unlike those under the Foreigners Act) were significantly more tedious and this accounts for the low rates of identification of foreigners under the Act.

The IMDT Act's stipulations regarding the identification of illegal migrants made identification more difficult, giving a central tribunal the final power of determination. It also reversed the process of identification provided in the Foreigners Act, 1946, under which it was the responsibility of the person identified as an illegal migrant to prove his/her legality, by shifting the onus of proof onto the 'applicant' averring or claiming that a person was an illegal migrant. Not surprisingly, therefore, despite the Assam Accord reached between the Rajiv Gandhi government and the leaders of the Assam movement on 15 August 1985, the IMDT Act continued to be an irritant in the consensus reached on the citizenship question in Assam up to 2005, when the Supreme Court scrapped the Act.

The accord reached in August 1985 as stated earlier, was a broad settlement on cultural and economic development concerns, which included the promise by the Central government to ensure 'constitutional, legislative and administrative safeguards ... to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people' and the 'all round economic development of Assam'. On the question of 'foreigners' in Assam, the accord evolved a *graded/differentiated* system, categorizing them on the basis of the date on which they had entered India. It legitimized the citizenship status of a large number of immigrants who had come before 1966. Those who had entered the state between January 1966 and 25 March 1971 were to be legitimized in phases, that is, they were to be disenfranchised for a period of 10 years, while others who had come after March 1971 were to be deported as illegal migrants. It was also agreed that the state government formed after the elections of 1983 would resign, the state assembly would be dissolved, and fresh elections based on revised electoral rolls would be held in December 1985. In November 1986, the Parliament enacted an amendment to India's citizenship law giving effect to the provisions of the accord.

With the signing of the Assam Accord, a hierarchized model of citizenship was confirmed in Assam. While the Assamese people, whose claim to citizenship was beyond any legal dispute, constituted the abstract universal citizen in the state, the migrant, marked out by

her or his linguistic and religious difference, occupied a residual zone of ambivalent citizenship. This ambivalence derived from the graded citizenship the Citizenship Act of 1986 had put in place for migrants. In practice, however, since both the Foreigners Act and the IMDT Act were to apply simultaneously, to identify those who came before 1971 and after it, respectively, and the two prescribed different modes of determining citizenship, all migrants continued to occupy a zone of perpetually indeterminate citizenship and suspect legality.

Significantly, the provisions of the Assam Accord on citizenship, which were given effect through the 1986 amendment in the Citizenship Act, along with the IMDT Act, which provided one of the ways by which citizenship was to be determined, introduced exceptional measures for Assam. Both the exceptions had ramifications for the manner in which citizenship issues unfolded in Assam and for the ideological basis and institutional practices of citizenship in the country in general. Thus, while the accord marked a political consensus on the issue of what constituted legal citizenship in the case of Assam, seeking to make it an exception, which was manifested in the amendment in the Citizenship Act, there was another way in which exception was built into the issue. The IMDT Act which provided the legal procedure through which the illegal migrants, that is, those Bangladeshis who had entered Assam after 25 March 1971, were to be identified and sifted out for deportation, was an exceptional measure applied only in Assam. For all other states, or for the determination of illegal and alien presence in Indian territory in general, the Foreigners Act, 1946 and the Rules of 1964 made thereunder sufficed. However, this state of exception contained contradictory layers. While the amendment in the Citizenship Act making an exception in the manner in which citizenship was to be defined in the case of Assam, reaffirmed Assamese difference and cohabitation with Indian citizenship, the exception in procedures of identification, as manifest in the IMDT Act, marked a contradiction in this cohabitation, since the Central government retained the power to determine illegality on its own terms. The following section will examine the ways in which the various layers in the contradiction unfolded in the period 2000–6 in the contest over the 'legitimacy' of the IMDT Act.

CHANGING REGIMES AND THE IMDT ACT

In the period following the accord, the citizenship question in Assam under the two legal regimes—the IMDT Act and the Foreigners Act—generated allegations that put the Central government and the Assam

movement on a collision course. There was a general distrust for an Act which was applied exclusively to the state without its 'consent'. The Assam Accord had specifically stated that the Central government would give due consideration to the sentiments of the AASU/AAGSP, particularly the difficulties that attended the implementation of the IMDT Act. Evidence of 'extremely low' numbers identified and deported since the passage of the IMDT Act continued to be brought up to buttress the position of the AASU/AAGSP. Simultaneously, the process of preparation of the electoral rolls, which was to affirm both citizenship as well as its deferral under the Foreigners Act, was fraught with controversy over procedures.

On 27 January 1990, the Union Home Secretary and the Chief Secretary of Assam signed a document setting a time frame for the implementation of the Assam Accord. The document mentioned explicitly that a decision on the repeal of the IMDT Act would be taken by 28 February 1991. In a meeting on 20 September 1990 between the Union Home Minister, the Chief Minister of Assam, and representatives of AASU, the AASU again called for repeal of the IMDT Act. The Central government gave assurance that it would initiate discussion on the issue of repeal with other political parties. The Act, however, remained on the statute books, even as the Central government continued to assure the AASU that repeal of the Act was under consideration. Thus, in a meeting on 11 August 1997 with the AASU, the Union Home Minister admitted that the Act's results were indeed extremely poor and he announced that he had decided to visit the state to take stock of the situation regarding illegal immigration and the inadequacy of the measures taken to prevent it. In the following year, in April and September 1998, the AASU was assured that the Central government was actively considering repeal of the Act. This assurance was affirmed in the President of India's address to the Parliament in February 1999. In another meeting held on 18 March 1999 between the representatives of the Central government, the government of Assam, and the AASU, assurances regarding repeal were given again.

These administrative and political manoeuvrings were truncated as the issue of repeal was propelled into the judicial domain in 2000 when a writ petition for the Act's repeal was placed before the Supreme Court by Sarbananda Sonowal, a former president of AASU, former MLA from the AGP, and Member of Parliament. The petition Sonowal submitted stated: 'IMDT Act is wholly arbitrary, unreasonable and discriminates against a class of citizens of India, making it impossible for citizens who are residents in Assam to secure the detection and deportation of foreigners from Indian soil' (*Sarbanand Sonowal* v. *Union of India and*

Another: para 2, p. 1). A reading of the petition by Sonowal shows the persistence of a strand within the Assam movement that focused on the resolution of the question of illegal migrants within the framework of the Indian Constitution. Sonowal couched his petition in a vocabulary that may well be termed 'constitutional patriotism', identifying with the notion of a political community that is not primarily concerned with cultural and ethnic ascriptions, but rests upon constitutional practices and legal principles that define the terms of citizenship. Yet, his constitutional patriotism was qualified, in so far as it was hedged in with a concern for securing political boundaries with more stringent application of immigration laws. Sonowal petitioned as a 'citizen of India', who happened to 'ordinarily reside in Assam', raising issues that he claimed 'concern[ed] all residents of the state of Assam whose rights as citizens of India [had] been materially and gravely prejudiced by the operation of the IMDT Act, 1983' (ibid.). It is significant that in his petition, Sonowal foregrounded the masked identity of the Indian citizen, relegating the Assamese identity to a mere fact of residence, dissolving in the process the emotive and affective aspects of Assamese identity that the movement manifested in the years from 1979 to 1985. Thus, the principal grievance of the petitioner that emerged after the ascriptive aspects of citizenship are sieved out was the discriminatory nature of the Act in denying to the people of Assam the same terms of membership that other Indians enjoyed.

The Supreme Court's decision to declare the Act unconstitutional came in August 2005, almost five years after Sonowal filed his petition. During the five-year hiatus, five counter-affidavits were filed, three by the Central government and two by the government of Assam. The individual counter-affidavits were filed by the state and Central governments following changes in regimes, with each affidavit rolling back the position articulated by the previous regime. The government of Assam filed two counter-affidavits. The first counter-affidavit was filed by the AGP government in the state in August 2000 in response to Sonowal's petition. The second was filed a year later by the Congress government, which succeeded the AGP government, reversing the position taken in the first affidavit. If one looks at the Central government's affidavits, the first filed by the Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA) government in July 2000 was in immediate response to Sonowal's petition, while the second filed by the NDA government, was in response to the second affidavit by the Congress government in Assam. The third additional affidavit was filed by the Congress-led United Progressive Alliance (UPA) government, which succeeded the NDA government at

the Centre. If the second additional affidavit by the NDA government was more emphatic than its first counter-affidavit in portraying the aggravated circumstances in Assam, necessitated by the reversal in the now Congress-led state government's position, the UPA government's affidavit totally reversed the Centre's position to bring it in consonance with the position articulated in the second affidavit by the state government in Assam. The table below gives a synoptic view of the sequence of affidavits and counter-affidavits filed by the different governments over the five-year period between the petition and the judgment:

Table 2.1 Changes in Positions of the Central and State Governments in the Affidavits Filed by Them

Nature of Affidavit	Date	Filed	Salient Features
First (counter) affidavit	18 July 2000	By the Central (BJP led NDA) government	• Filed in immediate response to Sonowal's petition • Agreed with Sonowal's position on the IMDT Act being discriminatory for its application only in Assam • IMDT Act inefficient/inadequate • While Sonowal's petition focused on an effective legal resolution of the 'foreigners' issue, the NDA government at the Centre emphasized on demographic change in the state, its religious and economic ramifications, and implications for national security
First (counter) affidavit	28 August 2000	By the (AGP) government in Assam	• Filed in response to Sonowal's petition • Agreed with Sonowal's position that the IMDT Act was discriminatory • Focused on change in the demographic profile of Assam in particular the rise of Muslim population • Drew for legitimacy on the Assam movement, its own role in it, the mass/popular basis of the movement
Second (counter) affidavit	8 August 2001	By the (Congress) government in Assam	• Filed by the new (Congress) government in Assam after withdrawing the first affidavit to 'correct' the position taken by the previous (AGP) government

(*contd* . . .)

Table 2.1 *(contd . . .)*

Nature of Affidavit	Date	Filed	Salient Features
			• Reversed the position taken by the previous (AGP) government in Assam on IMDT Act, declaring that it was constitutional and there was no reason to scrap it • Asserted claims to people's support on the basis of its electoral victory and its manifesto pledging to save Indian citizens from unnecessary harassment in the name of detecting foreigners
Second (additional) affidavit	Not available	By the Central (BJP led NDA) government	• Filed in response to the changed affidavit filed by the Congress government in Assam • Reiterated its earlier stand on the IMDT Act, demographic change, and national security • Emphasized that the IMDT Act was in fact the single most important factor responsible for the aggravated situation in Assam • The continued application of the Act amounted to preferential protection of the illegal migrants in the state • Exposed the 'duplicity' in the Congress government's position in the state by referring to the stand taken by the Congress on the issue in other forums and recommendations of the Law Commission
Third (counter) affidavit	24 November 2004	By the Central (Congress led UPA) government	• Totally reversed the Centre's position to bring it in consonance with the position articulated in the second affidavit by the state government in Assam • IMDT Act protective of genuine Indian citizens by enabling judicial scrutiny

Source: Collated by the author from the judgment in *Sarbanand Sonowal* v. *Union of India and Another*, Supreme Court of India, decided on 12 July 2005. AIR 2005 SC 2920, available on http://judis.nic.in/supremecourt/chejudisasp, last accessed on 6 September 2008.

The first counter-affidavit was filed by the BJP-led NDA government at the Centre on 18 July 2000, in response to Sonowal's petititon. The BJP, a right-wing Hindu nationalist party—with the political plank of Hindutva as the basis for a universal Indian citizenship, occluding religious diversity in India—has held on steadfastly to a position of cleansing India of illegal (Muslim) migrants. The first counter-affidavit filed by the Central government manifested, therefore, a thematic connection with Sonowal's petition in so far as it argued that the IMDT Act was inadequate in identifying illegal immigrants and that its 'exceptional' application in the case of Assam alone was discriminatory. In paragraph 12 of the counter affidavit, the Central government stated that 'the basic objection of the petitioner is under consideration of the Central government that the IMDT Act and the Rules made thereunder are not effective in comparison to the Foreigners Act, 1946, which is applicable to the whole country except the state of Assam'. In paragraphs 18 and 19 of the counter-affidavit, the Central government invoked the figures given by the Assam government as proof of the 'extremely dismal' progress in respect of detection/expulsion of illegal migrants (those who entered Assam on or after 25 March 1971 up to 30 April 2000):

Total number of enquiries initiated	3,10,759
Total number of enquiries completed	3,07,955
Total number of enquiries referred to screening committees	3,01,986
Total number of enquiries made by the screening committee	2,98,465
Total number of enquiries referred to IMDTs	38,631
Total number of enquiries disposed of by IMDTs	16,599
Total number of persons declared as illegal migrants	10,015
Total number of illegal migrants physically expelled	1,481
Total number of illegal migrants to whom expulsion order served	5,733
Total number of enquiries pending with screening committee	3,521
Total number of enquiries pending with the Tribunal	22,072

However, unlike Sonowal's petition, in which the demands were couched within the framework of legal–constitutionalism, asking for effective implementation of the Assam Accord and the legal resolution of the 'foreigners' issue as envisaged in the accord—the IMDT Act being ineffective and contrary to the terms of the accord—the NDA government's counter-affidavit revealed a communitarian imaginary of the political community. Premised on issues of demographic change in Assam, the religious and economic reasons for the outflow from Bangladesh, and the associated problems of national security, the NDA

government sought to forge homogeneity through legal intervention. Paragraph 3 of Annexure R-I to the counter-affidavit, for example, stated: 'Continuing influx of Bangladeshi nationals into India has been on account of a variety of reasons including religious and economic....' (Para 4, judgment, *Sarbananda Sonowal* v. *Union of India and Another*). Among the pull factors on the Indian side, 'ethnic proximity and kinship enabling easy shelter to the immigrants' (ibid.) and 'interested religious and political elements encouraging immigration' (ibid.) were cited. The 'demographic composition', (ibid.), it argued,

> [particularly] in the districts bordering Bangladesh has altered with the illegal immigration from Bangladesh. The districts of Assam and West Bengal bordering Bangladesh have recorded growth of population higher than the national average .... Illegal immigrants from Bangladesh have also been using West Bengal as a corridor to migrate to other parts of the country. (ibid.)

This large-scale influx, it argued, had led to large tracts of 'sensitive international borders being occupied by foreigners' (ibid., para 5), having 'serious implications for internal security' (ibid.).

The state government's counter-affidavit filed by the AGP government on 28 August 2000, perhaps even more strongly than the Central government's counter-affidavit, focused on the change in the demographic profile of Assam, by emphasizing specifically, the rise in the number of Muslims in the state.[17] To buttress its argument, in particular, to justify it through the weight of moral force, it invoked the Assam movement, highlighting its peaceful and sacrificial register ('large-scale satyagrahas, bandhs, dharnas'), the AGP's own role in the movement along with the AASU, and the 'mass support' that the movement had garnered (*Sonowal* v. *Union of India and Another*: para 5). The equation of the movement with a satyagraha is significant since it enabled the government to contrast it with the intimidation and insecurity that 'the unabated influx of illegal migrants from Bangladesh' generated among the Assamese people, 'not only threatening their own existence in their own state, but also the security of the country' (ibid.). The state government also emphasized that the IMDT Act was discriminatory in so far 'as it [had] been made applicable only to the State of Assam and not to other States like West Bengal, Tripura, and Meghalaya, etc., which [were] facing similar problem of illegal migrants' (ibid.). The state government informed the court of the various appeals it had made to the Central government for the repeal of the Act as well as for making 'appropriate amendment to the Citizenship Act 1955 in order to declare the children of the illegal migrants entering into India after 1971 as foreigners' (ibid., para 6).

A year later, while the case was still pending before the Supreme Court, on 8 August 2001, the state of Assam, now ruled by the Congress party (whose government in the Centre had been instrumental in enacting the IMDT Act) requested the Supreme Court for permission to withdraw the earlier affidavit filed on 28 August 2000 by the AGP government and place on record a new affidavit. The state government informed the Court that the affidavit filed by the former AGP-led government 'did not reflect the correct position of law' and a new affidavit was, therefore, required to be filed. The Congress government in the state reversed the position of the previous government by holding that the IMDT Act was constitutional and repealing or striking it down was out of the question. Like the AGP government had done earlier, the Congress government too claimed it had the people's support. This support was derived, however, not as the AGP government had claimed, from a people's movement, but from the popular consent that was given to it in the recently concluded state assembly elections and, by implication, to its election manifesto, where 'it was specifically declared that the Act was introduced to save the Indian citizen from unnecessary harassment in the name of detection of foreigners *and the Congress party is committed to oppose any move to repeal the Act*' (ibid., emphasis added).

The Central government, still under the BJP-led NDA, filed an additional affidavit in reply to the counter-affidavit filed by the Congress government in Assam. Reiterating that 'large-scale illegal migration' had 'threatened the demographic structure of the area and seriously impaired the security of the nation', the new affidavit proclaimed vehemently that the IMDT Act 'had been the *single factor* responsible for dismal detection and expulsion of illegal migrants in Assam'. Pointing out that 'in the neighbouring states where the law is not in force, the process of detection (although far from satisfactory) has been far more

[17] Paragraph 8 of the state (AGP) government's counter-affidavit gave the 'statistical analysis' for the decades of 1951–61, 1961–71 and 1971–91, to show 'that Muslim population of Assam has shown a rise of 77.42 per cent in 1971–91, whereas Hindu population has risen by nearly 41.89 per cent during the said period'. It argued that three districts in particular, having borders with Bangladesh, namely, Karimganj, Cachar, and Dhubri, showed substantial rise. While the all-India percentage of decadal increase in population during 1981–91 was 23.85 per cent, in Karimganj the decadal increase was 42.08 per cent, in Cachar district 47.59 per cent and in Dhubri district, 56.57per cent.

effective than in the State of Assam', the counter-affidavit alleged that the continued operation of the Act in Assam 'virtually gave the illegal migrants, in the State, *preferential protection* in a matter relating to the citizenship of India', which was 'unconstitutional and violative of the principles of equality'.[18] Claiming that the 'State had not given any fresh facts and figures, which would seek to suggest that this Act had secured the object of dealing with illegal infiltrators', the affidavit emphasized that the counter-affidavit filed by the state government replacing the original affidavit, indicated that the 'matter has now become a political rather than a legal issue'. To press this point, the counter-affidavit referred to the past positions articulated by the Congress party on the matter, in particular the report of the general secretaries to the Seventh General Conference of the North-Eastern Congress (I) Co-ordination Committee dated 3 July 1992, which recorded that:

> There are infiltrations—though it is a difficult task to examine the precise number. (2) The infiltrations are not only by minorities of Bangladesh but also from the majority Muslims. In absolute terms, the number of Muslims crossing into India is likely to be much larger than that of non-Muslims. (3) An ideological support is given to the phenomenon by the Islamic Fundamentalists creating the vision of a larger country comprising Bangladesh and the entire North East where its economic problems will be solved and security ensured. (4) There is a direct correlation between the rise of fundamentalism and increase in influx. (*Sonowal* v. *Union of India and Another*)

What is interesting about this reference by the NDA government is that while it reveals Congress's doublespeak, it simultaneously lets the Congress mouth an argument that is otherwise attributed to the BJP and manages, thereby, to reinforce its own position before the court. Letting the impact of what the Congress had recorded stay and dissolving its credibility at the same time, the affidavit goes on to cite the Law Commission's 175th Report on the Foreigners (Amendment) Bill 2000, which noted that illegal migrants pose a threat to Indian democracy and security of the country.

The Central government filed the third affidavit on 24 November 2004, when the Congress-led UPA government came to power, replacing

[18] The counter-affidavit pointed out that whereas since the enforcement of the IMDT Act, only, 1494 illegal migrants had been deported from Assam up to 30 June 2001, in contrast, 4,89,046 Bangladeshi nationals had actually been deported under the Foreigners Act, 1946 from the State of West Bengal between October 1983 and November 1998.

the BJP-led NDA government. The fresh affidavit reversed the NDA government's position. From the IMDT being the sole and decisive factor for the dismal rate of detection of illegal migrants into Assam, and for giving them 'preferential protection' (ibid.: para 8), the UPA government claimed that the Act, in fact, 'protected the genuine Indian citizens' (ibid.: para 10) by introducing 'an element of judicial scrutiny to determine the citizenship of a person' (ibid.). The low numbers of referrals to the Tribunal for opinion and still lower numbers who were detected as 'illegal' only showed, the affidavit argued, that 'but for the element of judicial scrutiny thousands of *Indians* would have been deported' (ibid.: para 10, emphasis added).

THE SUPREME COURT JUDGMENT AND THE DEFINITION OF INDIAN CITIZENSHIP

In its judgment, delivered on 12 August 2005, almost five years after the filing of Sonowal's petition, a three-judge Supreme Court bench declared the IMDT Act unconstitutional.[19] The judgment ordered the transfer of cases pending before tribunals created under the IMDT Act to tribunals created under the Foreigners Act and Rules, which, with the rolling back of the overriding powers of the IMDT Act, were to apply in all cases in the state of Assam. The Supreme Court mandated the setting up of 21 tribunals under the Foreigners Act. While the grounds on which the Supreme Court declared the IMDT Act unconstitutional were specifically issues of legal procedure and constitutional principles, the substantive grounds which were suggested by the court to justify the arguments pertaining to correction of procedural anomalies have ramifications for the way in which the ideological basis of citizenship are defined and interpreted. Finding fault with the way in which the IMDT Act shifted the onus of proof onto the 'designated authority' or the prosecution, the judgment stated: 'prosecution cannot prove residence and date of birth, facts exclusively within the knowledge of migrants', and shifted the burden of proof onto the person 'suspected' of being a foreigner (*Sarbananda Sonowal* v. *Union of India and Another*). By shifting the burden of proof onto the 'suspect', the Supreme Court endorsed the reversal of a fundamental principle of law whereby an accused/suspect is presumed innocent until proven guilty. While giving effect to this exception in legal procedures, the court hoped to eliminate what Sonowal's petition and the state and the Central governments had

[19] The judges were R.C. Lahoti, CJ, G.P. Mathur, J, and P.K. Balasubramanyam, J.

at different points sought to impress as an unfair exception—that the IMDT Act was discriminatory and its application exclusively to the state of Assam was in the nature of an exemption for illegal migrants in Assam from the Foreigners Act, 1946, and Rules of 1964, which applied to the rest of the country.

Interestingly, while accepting a legal regime of suspicion, the Supreme Court justified this exception on two counts: (1) on grounds of *restoring state sovereignty*, which it claimed was greatly diminished by the IMDT Act since it deprived the 'Union of the right to expel foreigners who violated the Citizenship Act'; and (2) on grounds of *restoring to the Union its constitutional duty of protecting the state from external aggression* under Article 355 of the Indian Constitution, which entrusts upon the Union of India the duty to protect every state against 'external aggression and internal disturbance' (*Sonowal* v. *Union of India and Another*, 2005, para 38).

It is significant that while declaring the IMDT Act unconstitutional, the court described immigration not merely as 'illegal' entry into foreign territory, *but as an act of aggression*, arguing within a discursive framework that makes for a bounded notion of citizenship, with the policing of boundaries and the determination of citizenship construed as a significant manifestation of state sovereignty.[20] Moreover, the arguments that the judges made before identifying migration as an act of aggression placed their articulation of citizenship squarely within the framework of an ethnically determined membership of the nation-state. In this exposition, the constituent outsider was marked out not only on account of being a foreigner, but also on account of being a Muslim, the latter inevitably associated with Islamic fundamentalism, as well as a threat to the nation (*read* Hindu) and its security.

Significantly, the judgment's discussion of demographic shifts in Assam, and hence the undesirability of the IMDT Act, switches from an examination of the population break-up in terms of linguistic profile to a religious profile of the state. The examination focuses, thus, on the increase in the *Muslim* population, occluding in the process the linguistic specificity and cultural preservation that had formed the basis of differentiated citizenship articulated in the initial stages of the Assam movement,

[20] The judgment goes through an elaborate discussion of the 'wide import' and meanings of the word 'aggression' through paragraphs 31 to 37, in the dictionary, in Indian laws and laws of other countries, and in international law and covenants, including the Charter of the United Nations.

followed by developmental concerns.[21] By treating migration as an act of aggression, the judges see it as imperative for sovereign states to identify, expel, and even repulse such acts. Paragraph 32 of the judgment identifies protection against aggression as the foremost duty of the state, and then moves through several paragraphs examining the meaning of the term aggression in different contexts, before coming onto an elaboration of the statement of objects and reasons of the IMDT Act:

> [T]he influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North-Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region ... continuance of these persons in India has given rise to serious problems ... the continuance of such foreigners in India is detrimental to the interests of the public of India, connecting their presence to the presence of Pakistan's ISI in Bangladesh and its support to militants in Assam in particular Muslim militant organization that have mushroomed in Assam. (*Sarbananda Sonowal* v. *Union of India and Another*)

Following the defeat of its stand in the Supreme Court judgment, the Congress-led UPA government at the Centre set up a Group of Ministers (GoM) to address the situation arising out of the ruling. Home Minister Shivraj Patil stated:

> We will implement whatever the Supreme Court has observed .... At the same time the Government will ensure justice to those who speak Bengali or are from a particular religion so that they are not harassed. We will keep both these aspects in mind in formulating the policy.[22]

In February 2006, the Congress-led UPA government proposed that the Foreigners Act, which would now determine the 'illegal migrant', be modified so as to give a fair chance to the migrants to prove their credentials. This move was seen largely as being aimed at electoral gains in Assam in the forthcoming state assembly elections. On 10 February 2006, the Central government issued a notification through the Foreigners (Tribunals for Assam) Order, 2006, whereby the onus to prove that a particular person was a foreigner was put back on the complainant/prosecution, following the procedure that figured under

[21] It is interesting that the Supreme Court judgment is available in entirety on the website *esamskriti*, with a short prologue by a person called Sanjeev Nayyar. At the end of the text of the judgment, the notation 'Long live Sanatan Dharma', inserted by the author, reveals how the judgment resonated with anti-Muslim sentiments.

[22] 'GoM not against IMDT Act, says Patil', *The Hindu*, 24 August 2005, p. 12.

the repealed IMDT Act. The order was again deeply imbricated in the politics of the state. With the state assembly elections due in April 2006, the order invoked animated responses from the BJP, the AGP, and the AASU, who challenged its constitutional validity in the Supreme Court, which, after having heard both sides, on 5 May 2006, reserved its verdict.[23] The verdict, which was finally delivered seven months later, on 5 December 2006, quashed the Foreigners (Tribunals for Assam) Order and instructed the government to set up within four months sufficient number of tribunals to identify foreigners in Assam under the Foreigners Act.[24]

In the meantime, the elections in Assam in April 2006 saw the petering out of existing alignments (BJP and AGP), the emergence of realignments (AGP and the Left parties), and the fracturing of the traditional political bases of the major political actors in the state. The AGP lost its base among the Assamese-speaking population in the state and the Congress, despite its win, saw an erosion of its base among the Bengali-speaking population, especially Muslims,[25] with

[23] In an affidavit filed in response to petitions of AGP MP Sarbananda Sonowal and local BJP leader Charan Chandra Deka challenging the February 10 notification in this regard, the Centre said, 'the notifications have been issued to address the concerns of the genuine Indian citizens living in Assam. . . .' Sonowal and Deka sought quashing of the notification under the Foreigners Act on the ground that it put the onus on the complainant to prove that a particular person was a foreigner. However, the Centre contended that the notifications did not, 'in any way', contravene the provisions of Section 9 of the Foreigners Act, 1946 on the question of burden of proof as alleged by the petitioner. 'Centre, Assam Defend Foreigners (Tribunals for Assam) Order' 06', *Outlook*, 24 April 2006.

[24] The Supreme Court's ruling on the 2006 Executive Order followed the same line of reasoning as in the case of the IMDT Act. The Court found the order to be unreasonable, arbitrary, and in contravention of Article 14 of the Constitution (equality before law) since it applied only to Assam and not to other states bordering Bangladesh, as well as violative of the Centre's duty to protect the states under Article 355. A more significant indictment was the Court's statement: 'It appears that the 2006 order [issued after the Illegal Migrants (Determination by Tribunals) Act was declared unconstitutional] has been issued just as a cover-up for non-implementation of the directions of this court'. See for details, 'Foreigners in Assam', Editorial, *The Hindu*, 7 December 2006; 'Assam Foreigners Order Held Unconstitutional', *The Hindu*, 7 December 2006, p. 1; 'Form Tribunals to Deal with Illegal Migrants: Supreme Court', *The Hindu*, 7 December 2006, p. 12.

[25] The AUDF a party started by Muslim Ulemas and people of other communities, has Maulana Badruddin Ajmal as its president, who claimed in an interview that the party was for Hindu—Muslim unity. 'AUDF is for Hindu Muslim Unity: Badruddin Ajmal. 2006', accessed on 14 May 2006. http://www.Indianmuslims.info/news/2006, accessed on 8 June 2006. AUDF had put up 69 candidates, out of which 10 won. http://www.eci.gov.in?may2006/pollupd/ac/states/SO3/ASO3.htm (last accessed on 8 June 2006). Figures from the 2004 Lok Sabha elections from the Centre for the Study of Developing Societies (CSDS) data base (see Table 2.2) showed that while the Congress support cut across communities, the Bengali-speaking Muslims, followed by Assamese-speaking Muslims, both of whom constitute about 31 per cent of the population of Assam, were most likely to vote for it.

the rise of a new political front, the Assam United Democratic Front (AUDF).

In the elections itself, the veil of suspicion that had come to be woven around Muslims in the state was manifest in their blanket labeling as *Miya*, with the assumption that all of them, irrespective of the resolution of their citizenship status, were 'Bangladeshi infiltrators'.[26] The following account of the state election by a journalist is revealing:

But while everyone chases the Muslim vote, the Muslims are still treated as second-class citizens. Merely wearing a dhoti and baniyan [vest] can make

Table 2.2 Congress Voters from Different Communities (2004)

Communities	Congress	BJP	AGP
Bengali-speaking Hindus	24	50	10
Assamese-speaking Hindus	22	19	36
Bengali-speaking Muslims	72	08	09
Assamese-speaking Muslims	52	07	21
Adivasis	22	24	09

Source: Yogendra Yadav and Sanjay Kumar, 2006.

[26] In December 2005, The CEC, B.B. Tandon, stated that there were a large number of voters (almost 1.5 lakhs) on the state's electoral rolls who were of 'doubtful' nature, falling in what was technically designated as the 'D' category. Following the Supreme Court judgment scrapping the IMDT Act, these names had been transferred to the Foreigners' Tribunals for a final settlement. The CEC emphasized, however, that these 1.5 lakh people would not be allowed to vote in the forthcoming assembly elections in Assam. The 'D' category (D for doubtful) had been inserted in the state electoral rolls on the direction of the Election Commission of India in the early 1990s and comprised as many as 3.75 lakh voters. 'Assam Voter List has 1.5 Lakh Doubtful Names: CEC', *Indian Express*, 15 December 2005.

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Source: Yogendra Yadav and Sanjay Kumar, 2006.

[26] In December 2005, The CEC, B.B. Tandon, stated that there were a large number of voters (almost 1.5 lakhs) on the state's electoral rolls who were of 'doubtful' nature, falling in what was technically designated as the 'D' category. Following the Supreme Court judgment scrapping the IMDT Act, these names had been transferred to the Foreigners' Tribunals for a final settlement. The CEC emphasized, however, that these 1.5 lakh people would not be allowed to vote in the forthcoming assembly elections in Assam. The 'D' category (D for doubtful) had been inserted in the state electoral rolls on the direction of the Election Commission of India in the early 1990s and comprised as many as 3.75 lakh voters. 'Assam Voter List has 1.5 Lakh Doubtful Names: CEC', *Indian Express*, 15 December 2005.

a Muslim a 'Bangladeshi infiltrator.' Ismail Ali, a daily labourer living in the outskirts of Guwahati, was so tired of proving his 'Indianness' to the authorities time and again that he hit upon an ingenious idea. After casting his ballot, Ismail bandaged his finger where the indelible voter's ink had been applied—so that it would not be washed away and he would be able to brandish this proof of citizenship for at least a few weeks (Banerjee 2006).

A post-poll survey (see Table 2.3) put the scrapping of the IMDT Act and its reintroduction as an executive order as the most controversial issue of the 2006 elections, which sharply divided the electorate along ethnic lines. As the post-poll survey of CSDS shows, while the Hindus appear to support the scrapping of the Act, the Muslims, especially Bengali Muslims, favoured the Act.

Table 2.3 Supporters for the Scrapping of the IMDT Act

	Agree	Disagree
All	73	23
Assamese speaking Hindu	86	10
Bengali speaking Hindu	80	16
Assamese speaking Muslim	52	47
Bengali speaking Muslim	26	72

Source: Yogendra Yadav and Sanjay Kumar, 2006, 'An election too close to call', *The Hindu*, 9 April.

Yet, as the CSDS survey figures in Table 2.4 show, while both Bengali- and Assamese-speaking Muslims were more likely to vote for the Congress and formed a greater share of Congress's votes than other communities, the support for the Congress among Muslims, a comparison with Table 2.2 would show, had actually declined from previous years. Moreover, people's concerns seemed to be focusing more on issues of governance than on issues of identity. The Congress established a clear, almost comfortable lead, mainly in upper Assam and the Barak Valley, the latter being the Muslim-dominated region of the state. Table 2.4 shows that while the AGP was the first choice of the Assamese-speaking Hindus, with some support coming from Bengali-speaking Hindus and Assamese-speaking Muslims, the BJP was the most preferred party among Bengali-speaking Hindus and enjoyed some support from the Assamese-speaking Hindus as well. For the Muslims, the first preference was the 'others' category, including the AUDF. The Congress party's share of the Muslim vote fell below 40 per cent, representing a major setback for the party,

which used to secure about 60 per cent of the Muslim vote (Kumar *et al.* 2006).[27]

Table 2.4 Community-wise Preference for Political Parties

	Congress	AGP	BJP	Others
Assamese-speaking Hindus	27	34	11	28
Bengali-speaking Hindus	27	18	32	23
Assamese-speaking Muslims	35	17	3	45
Bengali-speaking Muslims	38	11	1	50
Scheduled Tribes	18	25	20	37

Source: Kumar *et al.* (2006).

In the 2009 general elections, as the National Election Survey (NES) conducted by Lokniti brings out, both the AUDF and the Muslim immigrant population in Assam were crucial. As Sandhya Goswami's (2009: 160–1) analysis of the NES data from Assam shows, the voting pattern of the Muslim-dominated constituencies showed a preference for the AUDF, eroding the Congress base among this section significantly, especially in the immigrant settler *char* areas of Assam. While the majority of the immigrant Muslims voted for the AUDF, among Assamese Muslims, the Congress gained support. The AGP, which allied with the BJP in these elections, lost a significant number of Muslim votes. Significantly, Sarbananda Sonowal, who had petitioned for the scrapping of the IMDT Act, lost the election to the Congress candidate, Paban Singh Ghatowar.

THE CITIZENSHIP QUESTION OF THE CHAKMAS OF ARUNACHAL PRADESH

It is interesting how the amendment to the Citizenship Act in 1986 prompted Chakma refugees in Arunachal Pradesh, a group of Bangladeshi migrants of a different legal status from those we have discussed so for, to approach the Supreme Court for citizenship under the amended Act. The Chakmas, who are Buddhist, originally belonged to the Chittagong Hill Tracts and Mymensingh district of East Pakistan (now Bangladesh). They fled to India in 1964 due to the displacement caused by the Kaptai Hydel Power Project, sought refuge in Assam and Tripura, and became Indian citizens in due course. Since Assam

[27] Kumar, Sanjay, Rajeeva L. Karandikar, Sandhya Goswami, and Yogendra Yadav, 'Congress Close to Majority in Assam'.

experienced the largest influx, it expressed its inability to rehabilitate all the refugees and requested other states to share the responsibility. About 57 families comprising 4,012 Chakmas were settled in parts of Arunachal Pradesh (then NEFA or North East Frontier Agency) and were allotted land in consultation with local tribals. Since then, the number of Chakma refugees in Arunachal Pradesh has continued to increase, hovering around 60,000. It must be noted that the decision to settle the Chakmas in Arunachal Pradesh was an exceptional measure, since Arunachal Pradesh has enjoyed a special status under the colonial government as well as the government of independent India, which did not permit 'outsiders' to own property/land in the state. Seen as 'temporary' residents, the continued presence of the Chakmas in the state in increasing numbers and their claims to resources and services generated anxiety among the indigenous Arunachalis of the social, economic, and cultural implications of the demographic changes in the state. The AAPSU (All Arunachal Pradesh Students Union) has led the struggle to oust the Chakmas from the state, including social and economic boycott, discrimination, and frequent appeals to the Central government to find a long-term solution.

In the case the *State of Arunachal Pradesh* v. *Khudiram Chakma* (AIR 1994 SCI 1461), the petitioner Khudiram Chakma was one of the 57 families of Chakma refugees that had migrated to India in 1964. These families were initially lodged in the Government Refugee Camp at Ledo, and later shifted to another camp at Miao. In 1966, the state government drew up the Chakma Resettlement Scheme for refugees and the Chakmas were allotted land in two villages. The appellant (and some others), however, moved out and secured land in another area through private negotiations. The state government questioned the legality of the transaction since, under the Regulations (the Bengal Eastern Frontier Regulation, 1873) then in force, no person other than a native of that district could acquire land in it. Following complaints against the appellant and others who had settled on this land, the state government issued an order on 15 February 1984, directing them to shift back to the 'area earmarked for them'. The appellant challenged this order before the High Court on the ground that Chakmas who had settled in Arunachal Pradesh were citizens of India and by seeking their forcible eviction, the state government was violating their fundamental rights. The order of the state government, they argued, was arbitrary and illegal and violated the principles of natural justice. Significantly, the appellant invoked Section 6-A of the Citizenship Act, which, we may recall from the

discussion earlier in this chapter, provided that all persons of Indian origin who came before 1 January 1966 to Assam from territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, and who had been ordinarily resident in Assam since their entry into Assam shall be deemed to be citizens of India as of 1 January 1966. Others who had come to Assam after that date and before 25 March 1971 could be registered as citizens with a deferred impact as far as political rights were concerned. The High Court held that 'the appellant and others did not fall under the said category as they had stayed in Assam for a short period in 1964 and had *strayed away therefrom* in the area now within the State of Arunachal Pradesh' (cited in *National Human Rights Commission* v. *State of Arunachal Pradesh*). [emphasis added]

In January 1996, in what is seen as a landmark judgment in the case *National Human Rights Commission* v. *State of Arunachal Pradesh and Another* (AIR 1996 SC 1234), the Supreme Court revisited its judgment in *State of Arunachal Pradesh* v. *Khudiram Chakma* to distinguish between the issue of citizenship raised in the Khudiram Chakma case from the larger issues of citizenship, rights, and justice that were raised by the National Human Rights Commission (NHRC) in its petition before the Supreme Court:

> . . . [in the Khudiram Chakma case] 57 Chakma families were seeking to challenge an order requiring them to vacate land bought by them in direct contravention of Clause 7 of the Bengal Eastern Frontier Regulation, 1873. The issue of citizenship was raised in a narrower context and was limited to Section 6-A(2) of the Act. The Court [had] observed that the Chakmas in that case, who were resident in Arunachal Pradesh, could not avail of the benefit of Section 6A of the Act which is a special provision for the citizenship of persons covered by the Assam accord. In the present case, the Chakmas are seeking to obtain citizenship under Section 5(1)(a) of the Act, where the considerations are entirely different. That section provides for citizenship by registration . . . . (*National Human Rights Commission* v. *State of Arunachal Pradesh*: para 17)

While the Chakma families in the Khudiram Chakma case staked their claims to citizenship on the basis of Section 6A, which applied solely to the state of Assam, the Chakmas who were represented in the petition by the NHRC sought to register as citizens under section 5(1)(a) of the Citizenship Act. Having been 'resettled' in the state of Arunachal Pradesh for more than three decades (at the time of making the petition), the Chakmas reminded the Government of India of the periodical guarantees of citizenship that had been given to them from

time to time. A public statement of such an assurance was first made in a joint declaration by the governments of India and Bangladesh in 1972. The claim to citizenship was, moreover, couched not merely in a desire for legal membership; it was rather premised in the 'protection' which this legal membership was to bring in its wake. Thus, the petition which was made to the Supreme Court by the NHRC following the complaints it received from groups of Chakmas, the People's Union for Civil Liberties (PUCL), Delhi, and the Committee for the Citizenship Rights of Chakmas (CCRC) sought to enforce the fundamental right to life under Article 21 of the Constitution of 'about 65,000 Chakma/Hajong tribals ... *being persecuted by sections of the citizens of Arunachal Pradesh*' (ibid.: para 1) [emphasis added]. Both the government of Arunachal Pradesh and the Central government were made respondents in the case.

The Chakmas had petitioned the NHRC informing it that they had made representations for the grant of citizenship under Section 5(1)(a) of the Citizenship Act, 1955 before their local Deputy Commissioners, who had kept the decision pending.[28] In the meantime, the relationship between the 'citizens' of Arunachal Pradesh and the Chakmas deteriorated progressively, so much so, that the Chakmas complained to the NHRC of the 'repressive measures' they were being subjected to 'with a view to forcibly expelling them from the state of Arunachal Pradesh' (ibid.: para 4). On 9 September 1994, the PUCL, Delhi, too brought the issue of repression to the attention of the NHRC, which, in turn, wrote to the Chief Secretary of Arunachal Pradesh and the Home Secretary, Government of India, making enquiries. On 30 September 1994, the Chief Secretary of Arunachal Pradesh wrote back saying the situation was totally under control and that the Chakmas were being given adequate police protection. The Chief Secretary's claims were challenged by the CCRC, which filed a representation with the NHRC on 15 October 1994, complaining of continued persecution of the Chakmas. The petition included a press report carried in *The Telegraph* of 26 August 1994, stating that the AAPSU had issued 'quit notices' to all foreigners, including the Chakmas, to leave the state by 30 September 1995, threatening to use force if the deadline was not adhered to. The NHRC treated the CCRC's representation as a formal complaint and on 28 October 1994, issued notices to the government of Arunachal Pradesh

[28] This section describing how events built up to the filing of the Public Interest Litigation (PIL) by the NHRC is based on the judgment of the Supreme Court delivered in this case.

and the MHA in the Central government, asking for their responses. The MHA sent its response on 22 November 1994, 'reaffirming its [the Central government's] intention of granting citizenship to the Chakmas' (ibid.: para 7). It also assured the NHRC that Central Reserve Forces had been deployed in response to the 'quit notices' issued by the AAPSU and that the state government had been directed to ensure the protection of the Chakmas. On 7 December 1994, the NHRC issued directions to the two governments yet again to 'appraise it of the steps taken to protect the Chakmas' (ibid.). Both the state and the Central governments ignored the directions sent by the NHRC and did not send their responses despite repeated reminders. After several months, on 25 September 1995, the state government sent what it called an 'interim response', requesting for a period of four weeks to file a supplementary report, but did not eventually comply with the deadline it had set for itself. The CCRC followed up by sending urgent petitions to the NHRC on 12 and 28 October, impressing upon the NHRC that there 'were immediate threats to the lives of the Chakmas' (ibid.: para 8). On 29 October 1995, the NHRC came to the conclusion that the state administration was acting in 'coordination with AAPSU with a view to expelling the Chakmas from the State of Arunachal Pradesh' (ibid.: para 8). Taking note of the delay that this complicity between the state of Arunachal Pradesh and the AAPSU was causing, the NHRC became apprehensive that its own efforts 'may not be sufficient to sustain the Chakmas in their own habitat' (ibid.), and decided to approach the Supreme Court to seek 'appropriate reliefs' (ibid.). On 2 November, the Supreme Court issued an interim order directing the state government to ensure that 'the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law' (ibid.).

While the immediate context precipitating the petition was the 'quit notices' served on 'foreigners' by the AAPSU, at the centre of the conflict was the question whether the Chakmas had *any* claim at all to Indian citizenship and to the right to residence in the state of Arunachal Pradesh. The resolution of the question involved the constitutional right of indigenous Arunachalis to the preservation of their culture, territory, and resources from outsiders, and competing assertion by the Chakmas for the protection of their claims to citizenship.

As seen in the earlier discussion of the identification regimes put in place for Bangladeshi migrants in Assam, the respective positions of the government of the state and the Central government on the issue of citizenship for Chakmas were mutually antagonistic. The NHRC's

petition provided the occasion where these antagonisms were played out in the course of the hearings in the Supreme Court. Significantly, on its part, the NHRC steered clear of this contest, by couching its appeal not as an issue of citizenship which required legal resolution, but as a human rights concern which was embodied in the right to life guaranteed in the Constitution to citizens as well as aliens.

The position of the Central government, expressed in its response in the Supreme Court to the petition by the NHRC, emerges from two premises: (1) a reminder to the Arunachal Pradesh government of its commitment to the resettlement of the Chakmas, which was made in 1964 after a negotiated consensus between the state and Central government, and the Central government's commitment to its international obligations emanating from negotiations with the government of Bangladesh; and (2) the legal intricacies and human rights concerns that the issue inadvertently generated.

As far as the intergovernmental negotiations and agreements were concerned, in 1964, after extensive discussions between the Government of India and the NEFA administration, the Chakmas had been sent to the territory which is, at present, the state of Arunachal Pradesh, for their resettlement. The Chakmas had since been residing in Arunachal Pradesh, having developed close social, religious, and economic ties with the region, so much so that any move to displace or evacuate them from their present habitat would have been both impracticable and inhuman. Pursuant to a joint statement issued by the Prime Ministers of India and Bangladesh in New Delhi in February 1972, the Central government had conveyed to all the states its decision to confer citizenship on the Chakmas, in accordance with Section 5(1)(a) of the Act. Moreover, the Central government made it clear that the children of the Chakmas, who were born in India prior to the amendment of the Act in 1986, would have legitimate claims to citizenship.[29] The Central government alleged that the government of Arunachal Pradesh had been expressing reservations on this account by not forwarding the applications submitted by the Chakmas along with their reports for grant of citizenship as required by Rule 9 of the Citizenship Rules, preventing the Central government from considering the issue of citizenship of the Chakmas. The Central government suggested to the Supreme Court that it was in favour of a dialogue between the state government, the Chakmas, and all concerned

[29] It may be noted that the Citizenship Amendment Act of 1986 restricted citizenship by birth to those either of whose parents were Indians.

within the state to amicably resolve the issue of granting citizenship to the Chakmas while also redressing the grievances of the citizens of Arunachal Pradesh.

Significantly, while the 1986 Amendment Act could not, as decided by the Supreme Court in the Khudiram Chakma case, provide the ground for conferring citizenship to Chakmas—who had, in the words of the court, 'strayed' from Assam—the Act also constrained the citizenship by birth of their children born in India. The 1986 amendment, we may recall, confined citizenship by birth only to those, either of whose parents were Indian citizens. Thus, Chakma children born after the 1986 amendment became effective were debarred from citizenship, unless of course the Chakmas were conferred citizenship.

The Arunachal Pradesh government's response to the NHRC's petition was also based on two premises, rejecting the commitment to citizenship for the Chakmas that the Central government demanded and the allegations of human rights violations that the NHRC made. The issue of citizenship, the state government argued, had been 'conclusively determined' by the decision of the Supreme Court in the Khudiram Chakma case, which the Arunachal Pradesh government had won against Khudiram Chakma's petition for citizenship under the amended Citizenship Act of 1986 pertaining to Bangladeshi migrants. For the state government, the question of conferring citizenship on the Chakmas was, thus, foreclosed. Consequently, in its opinion, the Chakmas were not entitled to all the fundamental rights that the 'citizens' had, except the right to life, which the state government contended it was adequately ensuring by 'providing the Chakmas with basic amenities' and 'protecting their lives and properties'. Moreover, the state government asserted, since the Chakmas were 'foreigners', the state government was within its rights to ask them to 'quit' the state:

> . . . since the Chakmas are foreigners, they are not entitled to the protection of fundamental rights except Article 21. This being so, the authorities may, at any time, ask the Chakmas to move. They also have the right to ask the Chakmas to quit the state, if they so desire . . . having lost their case in this Court, the Chakmas have raised a bogey of violation of human rights. (*National Human Rights Commission* v. *Arunachal Pradesh*, para 11)

Most significant in the response of the state government was its assertion that its actions drawing from the above position (that the Chakmas were foreigners and not entitled to all fundamental rights and that the state government had the right to serve the Chakmas the notice to 'quit') had the mandate of the Constitution of India. Pleading

helplessness at 'the sui generis Constitutional position of the State [that] debars it from permitting outsiders to be settled within its territory', the state government cited its 'limited resources', an economy 'mainly dependent on the vagaries of nature', and lack of financial resources 'to tend to the needs of the Chakmas having already spent approximately Rs 100 crores on their upkeep', and the refusal of the Central government to 'share its financial responsibility', in support of its decision to make the Chakmas leave the state:

> . . . under the Constitution, the state of Arunachal Pradesh enjoys a special status and, bearing in mind its ethnicity, it has been declared that it would be administered under Part X of the Constitution. That is the reason why laws and regulations applicable during the British Regime continue to apply even today. The settlement of Chakmas in large numbers in the State would disturb its ethnic balance and destroy its culture and identity. The special provisions made in the Constitution would be set at naught if the State's tribal population is allowed to be invaded by people from outside. The tribals, therefore, consider Chakmas as a potential threat to their tradition and culture and are, therefore, keen that the latter do not entrench themselves in the State. Besides, the financial resources of the State without Central assistance, which is ordinarily not forthcoming, would throw a heavy burden on the State which it would find well nigh impossible to bear. In the circumstances, ... it is unfair and unconstitutional to throw the burden of such a large number of Chakmas on the State. (ibid.: para 14)

Drawing upon its special 'protected' status in the Constitution, the government of Arunachal Pradesh claimed to have followed a procedure laid down in the Citizenship Act of 1955 and Rules of 1956, whereby the local administration could exercise a considerable degree of discretion. The procedure involved an application to the Collector of the area, who 'made necessary enquiries about the antecedents of the applicant and after getting a satisfactory report forwarded the case to the state government, which in turn forwarded it to the Central government' (ibid.: para 13). In case, on enquiry, the report was adverse, the DC would not forward it further. Thus, if the Chakmas had received no response to their applications for citizenship, the state government's argument was that the lack of response was not because the application was pending before the DC. Indeed, it argued, 'the applications, if any, made in this regard [would] have already been disposed of after necessary enquiry' (ibid.: para 15), concluding that the applications for citizenship by the Chakmas would have received adverse response and, therefore, not acted upon. Eventually, however, this basically meant that the applications were not forwarded to the Central government and the applicants themselves were not communicated of any action.

Significantly, the Supreme Court found discrepancy in the state government's present position claiming autonomy over matters of citizenship pertaining to the state, on the basis of its special constitutional position and the procedures prescribed under the Citizenship Act and Rules, from the stand that it had taken earlier in its interim response to the NHRC. Interestingly, in its interim response submitted on 25 September 1995, the Arunachal Pradesh government had washed its hands of the matter, deflecting the responsibility and any blame, therefore, to the Central government. 'The question of grant of citizenship', it emphasized, 'is entirely governed by the Citizenship Act, 1955 and the Central Government is the sole authority to grant citizenship' (ibid.). The state government, it argued, has 'no jurisdiction in the matter' (ibid.).

Apart from the inconsistency in the state government's position, the Court also refused to accept the contention made by the state government that there was no threat to the life and liberty of the Chakmas guaranteed by Article 21 of the Constitution, and that it had taken adequate steps to ensure their protection. The Court endorsed the findings of the NHRC and the position of the Central government, concluding that there existed, 'a clear and present danger to the lives and personal liberty of the Chakmas':

> . . . the NHRC recorded a prima facie finding that the service of quit notices and their admitted enforcement appeared to be supported by the officers of the first respondent [the government of Arunachal Pradesh]. . . . the first respondent had, on the one hand, delayed the disposal of the matter by not furnishing the required response and had, on the other hand, sought to enforce the eviction of the Chakmas through its agencies . . . at no time, has the first respondent sought to condemn the activities of the AAPSU.
>
> . . . In the assessment of the Union of India, the threat posed by the AAPSU was grave enough to warrant the placing of two additional battalions of CRPF at the disposal of the State Administration. Whether it was done at the behest of the State Government or by the Union on its own is of no consequence; the fact that it had become necessary speaks for itself. . . . after the expiry of the deadline of October 30, 1994, the AAPSU and other tribal student organisations continued to agitate and press for the expulsion of all foreigners including the Chakmas . . . the AAPSU had started enforcing of economic blockades on the refugee camps, which adversely affected the supply of rations, medical and essential facilities, etc. to the Chakmas. Of course the State Government has denied the allegation, but the independent inquiry of the NHRC shows otherwise. The fact that the Chakmas were dying on account of the blockade for want of medicines is an established fact. After reports regarding lack of medical facilities and the spread of malaria and dysentery

in Chakma settlements were received, the Union Government advised the first respondent to ensure normal supplies of essential commodities to the Chakma settlement. On September 20, 1995 the AAPSU, once again, issued an ultimatum citing December 31, 1995 as the fresh deadline for the ousting of Chakmas. This is yet another threat which the first respondent has not indicated how it proposes to counter. (ibid.)

Elaborating on the relevant rules governing the procedure for obtaining citizenship, the Supreme Court made it clear that unlike the judgment in the Khudiram case, which the Arunachal Pradesh government presented to buttress its argument for denying citizenship to the Chakmas, in the present case, the Chakmas were seeking citizenship under Section 5(1)(a) of the Act, where the considerations were entirely different. This provision was of general application and not limited to persons belonging to a specific group as in the case of Section 6A. This provision could, therefore, be invoked by persons who were not citizens of India, but were seeking citizenship by registration. Such an application could be made under the existing rules to the collector within whose jurisdiction the applicant was ordinarily resident. The collector was required to transmit every application received by him to the Central government through the state government or the Union Territory administration, as the case may be, along with a report on specific matters required under the different clauses of the section.

The Supreme Court found it objectionable that the local administration in Arunachal Pradesh *thwarted the procedure* by 'rejecting the application at the threshold':

Yet it is an admitted fact that after receipt of the application, the Deputy Collector (DC) makes an enquiry and if the report is adverse, the DC refuses to forward the application; in other words, he rejects the application at the threshold and does not forward it to the Central Government. . . . It is obvious that by refusing to forward the applications of the Chakmas to the Central Government, the DC is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules. (ibid.)

Regarding the claims of the Chakmas to citizenship, the Supreme Court retraced the trajectory of the migration of Chakmas in 1964 from East Pakistan/Bangladesh to Assam, where they first settled, and then moved to areas which now constituted the State of Arunachal Pradesh, where, it argued, they faced persecution and possible annihilation. While the AAPSU was adamant about driving them out of the state, the neighbouring states expressed their unwillingness to accept them. The Chakmas had indeed become 'the no where people':

They have settled there since the last about two and a half decades and have raised their families in the said State. Their children have married and they too have had children. Thus, a large number of them were born in the State itself. Now it is proposed to uproot them by force. The AAPSU has been giving out threats to forcibly drive them out to the neighbouring State which in turn is unwilling to accept them. The residents of the neighbouring State have also threatened to kill them if they try to enter their State. They are thus sandwiched between two forces, each pushing in opposite direction which can only hurt them. (ibid.: para 19)

It was by 'virtue of their long and prolonged stay in the State' that the Chakmas who had migrated to the state, as well as those born in the state, sought citizenship under the Constitution read with section 5 of the Act. Allowing the petition, the Supreme Court issued the following directions to the government of Arunachal Pradesh and the Central government:

(1) The State of Arunachal Pradesh, was to ensure that the life and personal liberty of each and every Chakma residing within the state was protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, was repelled. The state government could requisition the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, it could request the Central government to provide additional force.

(2) The Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein, except according to the procedures laid down in the law;

(3) The quit notices and ultimatums issued by the AAPSU and any other group amounted to threats to the life and liberty of the Chakmas and should be dealt with by the state government in accordance with law;

(4) The application made for registration as citizen of India by the Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and forwarded by the Collector or the DC who receives them under the relevant rules with or without enquiry, to the Central government for its consideration in accordance with law; even those application that had been returned would be called back or fresh ones obtained from the concerned persons to be processed and forwarded to the Central government for its consideration;

(5) While the application of any individual Chakmas was being considered, the state government could not evict or remove the concerned person from his occupation/habitat on the ground that he was not a citizen of India. (ibid.: para 21)

The debates on the IMDT Act and the processes leading to the Supreme Court judgment have shown that that the question of citizenship in Assam unfolded at two layers, both of which articulated different

vocabularies of relationship between the 'population' and the 'state'. The cultural politics of constructing an Assamese identity or Assamese ethno-space sought the rolling back of the hegemonic national-political, by claiming difference and negotiating equal terms of reference with the Indian nation-state. On the other hand, since this identity was based on cohabitation, it also involved a political articulation of citizenship mediated by political institutions, actors, and processes; the meta-rules that framed the norms of the political process and relationships, that is, the Constitution; and institutions like the judiciary which interpret them. At both these layers, the expression of the culturally and politically autonomous selves produced the 'constitutive outsiders'—the 'residual citizens' who perpetually occupied the zone of uncertainty and suspicion as 'illegal aliens/migrants'—whose identification and expulsion was imperative for the nation-state. The articulation of citizenship as a domain of differentiated universalism, therefore, remained elusive.

In the case of the Chakmas, who had migrated from Bangladesh in the 1960s and were rehabilitated in Arunachal Pradesh by the Indian government, the competing claims to protection by the Chakmas and the Arunachalis generated distinct idioms of citizenship. The Arunachalis drew on the promise which the Constitution made to them, assuring them the right to preserve their culture, territory, and resources, as well as protection against any claims to the same by outsiders. The Chakmas too pressed a claim to protection of a different kind—the recognition of substantive membership as citizens—which went beyond that afforded by the legal category of a 'refugee' under the 'care' of the state. Unlike the Arunachalis, who pressed the Central government to secure to them differentiated citizenship which the Constitution guaranteed them, for the Chakmas it was only as universal undifferentiated citizens that the markers of a 'migrant/refugee' status and the liminal state of being a 'no-where people'[30] could be erased.

Significantly, there is a correspondence in the relative positioning of the Central government and the state government in the two cases. In the debate on the Bangladeshi migrants and the judgment on the IMDT Act, as well as on the question of the citizenship status of Chakma refugees, the Central government asserted its authority to being the final decision maker in matters concerning citizenship. The Supreme Court affirmed this power of the Central government, against the averments

[30] Pamela Philippose uses the expression for Bangladeshi migrants in India in general (Philipose 2009).

of the government of Arunachal Pradesh, which in turn derived its claims from the constitutional mandate pertaining to the special status of Arunachal Pradesh and the anxieties among the Arunachali people about the threat they perceived from the growing Chakma population in the state. While the trajectory of the IMDT case brings out in sharp focus the manner in which electoral configurations and considerations determined the course of the case, the change in the ideological basis of the state to a '*security state*' is evident in the judgment in the IMDT case, where 'dangerous' and 'disruptive presence' of the 'illegal alien/migrant' effectively ossified the borders of citizenship against whom the community and its territory needed to be fortified. The Supreme Court judgment construed the migrant as an aggressor whose identification and expulsion was important for the restoration of state sovereignty. There appear, thus, to be contradictory and contesting impulses within the political space—reflecting an ongoing churning—and the processes of institutionalization of these churnings as witnessed in the electoral arena and in the domain of the state. However, the popular churnings of the movement, as well as the modern mediating institutions like the political parties, do not ground themselves in the emancipatory rhetoric of equality and rights or the liberatory logic of the political space. They seem to be guided, ultimately, by the imperatives of buttressing the domain of the state, so much so that the 'legal-formal' (precision, standardization, and incorporation through norms, rules, statutes, and laws) and the 'political' (dismantling and rolling back of hierarchical and exclusionary norms) coexist in a precarious relationship which unfolds in ways that has significant implications for the definition of citizenship and the political community. While Bengali-speaking Muslims have come to constitute a 'suspect community' not just in Assam but in the rest of India, subjected to frequent dislocation, expulsion, or excision of their names from the voters' list (Roy 2008; Padhi 2007), there is an ongoing tendency of shift in the philosophical and ideological basis of citizenship, from civic and associational forms to a predominantly exclusivist ethnic definition of citizenship. While the Supreme Court judgment, in particular, the justification given by it for scrapping the IMDT Act, was one manifestation of the shift, a more enduring change has been taking place, almost imperceptibly, in the legal framework of citizenship in India. As discussed earlier in this work, the Citizenship Act of 1955 was an inclusive framework whereby every person born in India at the commencement of the Republic (26 January 1950) was an Indian citizen by birth. Commensurate with the Assam Accord, the Citizenship

Amendment Act of 1986, which, as mentioned earlier, inserted Article 6A in the Citizenship Act addressing the exceptional contexts of Assam, an amendment was also brought about in the category of citizenship by birth. Following this amendment, every person born in India would be a citizen of India, only if either of his/her parents was a citizen of India at the time of his/her birth. Descent from parentage of Indian origin became an overriding consideration, a trend which was to consummate with the Citizenship Amendment Act of 2003. Section 3, dealing with citizenship by birth as amended by the 2003 Act, subsequently provided that citizenship by birth would accrue to persons born in India where '*both of his parents* are citizens of India; or one of his parents is a citizen of India and the other is *not an illegal migrant* at the time of his birth' (Section 3C, Citizenship Amendment Act, 2003).

The Citizenship Amendment Act of 2003 and, again, of 2005, introducing the category of the OCI, was perhaps the most persuasive statement of encompassment that could be envisaged, both as far as the terms of citizenship are concerned, as well as the possible unit of membership. At the same time, however, not only was the de-territorialized and space-liberated notion of citizenship that the OCI signified deceptive, it occluded the ideological shift that was taking place in citizenship law simultaneously, as the principle of *jus sanguinis* or blood ties assumed equivocality, and even relative primacy, over the principle of *jus solis* or birth. For, in 2003, we see alongside the transnational/overseas Indian citizen, the 'illegal migrant' figuring in the Citizenship Act, in the process of making citizenship by birth exclusive and conditional. The implications of these changes on the constituent elements of citizenship, in particular social citizenship, will be discussed in the following chapter.

3

'Blood and Belonging'[1]

The Citizenship (Amendment) Act, 2003 and the Deception of De-territoriality

The 'return of the citizen' (Kymlicka and Norman 1994: 352) was announced in the 1990s, in the context of the changed socio-historical realities of an increasingly globalized, interdependent, and inter-connected world, characterized by transnational migrations and multicultural national populations rather than by bounded national communities. The period from the 1990s onwards has indeed seen a hitherto unprecedented interest in the notion of citizenship, manifested in a spate of writings on the subject. A large proportion of these writings is embedded in what may be termed the globalization framework, which alludes to the changes that are specific to the late twentieth century, in particular, globalization of economy; the unprecedented large-scale movement of populations, especially workers and refugees; displacement of class politics by identity politics; and the world-wide flow of culture, images, and information following the cataclysmic effects of technological and economic expansion. These changes, the writings argue, have brought

[1] The title of this chapter borrows from the title of Michael Ignatieff's book, *Blood and Belonging: Journeys into the New Nationalism* (1993). Making what he calls six journeys into new nationalisms of Croatia and Serbia, Germany, Ukraine, Quebec, Kurdistan, and Northern Ireland, Ignatieff states that modern nationalism is a language of 'blood' in so far as it is a call to one's deepest inherited attachments, which may express itself in ethnic cleansing. It is also a language of 'belonging', which may manifest itself in a 'call to come home'.

into existence conditions which have necessitated the displacement of two categories that had hitherto been the core of the theory and practice of citizenship, namely, the *individual* as the bearer of rights and the *nation-state* as the territorial unit of membership and citizenship identity. This global moment of citizenship has made way, they argue, for *multicultural* and *world or transnational citizenship*.

Alongside these claims of transnationality and globality of citizenship, however, there may be identified a dissonant note expressed in the lament and anxiety over a 'crisis' in citizenship. The lament of crisis is evident not only in some writings on global citizenship, but also in state practices, which, perhaps more vehemently than ever before, have striven to reinforce nation-state boundaries, restricting the inflow of foreigners, immigrants, and refugees. Citizenship itself gets defined in exclusionary terms and emerges as the bastion on which the nation-state asserts its sovereignty and fortifies itself against the 'hordes of starving people'. More significant, however, is the manner in which transnational citizenship generates unease and apprehensions in specific national locations. Seen as precipitating a 'duality' in citizenship in the 'host' country, transnational citizenship generates anxieties around the weakening bonds of community identity and social solidarity that make for robust citizenship. More significant, however, is the ways in which what appears to be an 'opening up' of narrowly defined territorial citizenship through an introduction of extra-territoriality is the simultaneous 'closing of ranks', with citizenship by birth giving way to citizenship by descent.

In this chapter, we shall look at the most recent amendments in the Citizenship Act, that is, the Citizenship (Amendment) Acts of 2003 and 2005, which introduced the category of Overseas Indian Citizenship (OCI). While mapping the legal-political processes leading up to the amendments, this chapter will examine the manner in which legal recognition of the category of overseas citizens of India was accompanied by a consummation of the association of citizenship with blood ties and descent, and a corresponding trajectory of disenfranchisement, dispossession, and illegality of the migrant. It will also show how the claims to de-territoriality of citizenship are deceptive and that this deception is confined not only to changes in citizenship laws in India, but is a global trend where claims to inclusive and border-free citizenship are accompanied by closures. The chapter will look, in particular, at the Supreme Court and High Court judgments on the question of the legality of Sonia Gandhi's citizenship to bring

out the contradictory ways in which the question of belonging unfolds in legal and political practice.

THE DECEPTION OF DE-TERRITORIALITY

The Citizenship (Amendment) Act, 2003 introducing the category of the OCI may at one level be seen as perhaps the most persuasive statement of encompassment,[2] both as far as the terms of citizenship are concerned, as well as the unit of its membership. At the same time, however, as the following discussion shows, not only is the de-territorialized and space-liberated notion of citizenship that the OCI proposes deceptive, it has occluded the ideological shift that has been taking place in citizenship laws simultaneously, as the principle of *jus sanguinis* or blood ties has assumed equivocality, and even primacy over the principle of *jus solis* or birth.

The Citizenship (Amendment) Act of 2003 introduced a version of dual/transnational citizenship for persons of Indian origin, in the form of 'Overseas Indian Citizenship'. Under the amended Act, an OCI is a person who is of Indian origin and citizen of a specified country, or was a citizen of India immediately before becoming a citizen of another country (mentioned in a specified list), and is registered as an OCI by the Central government. Prima facie then, as was also being claimed by politicians across the board while debates on the OCI were taking place, the OCI embodies the conjuncture of globality and transnationality of citizenship. Yet, the claims of a universalized de-territorialized citizenship are fraught with closures, some of which had their origins in the moment of the commencement of Indian citizenship. As mentioned before, the category of 'illegal migrant' makes an appearance in the legal code of citizenship simultaneously with the overseas citizen, and both are embedded in a notion of citizenship which has, at its basis,

[2] The logic of encompassment, as explained in the introductory chapter, works in a way so as to resolve the contradiction between abstract universalism and difference, posed by a critical theory of citizenship (Werbner and Yuval-Davis 2005: 10). Encompassment may be seen as a condition of progressive unfolding of universalism as a transcendental value. In order to be truly democratic, universalism has to take into account differentially located individuals and groups, and relocate itself as a framework of relationships and processes that recognize difference rather than deny or eliminate them. The logic of encompassment may then be seen as a progressive opening up of democratic spaces, as transcendental inclusive values become more firmly entrenched to address and overcome social closures.

ethnic-cultural-blood and kinship relationships. This is evident from the manner in which citizenship by birth has been progressively restricted through subsequent amendments in the Citizenship Act in 1986 and 2003 and made conditional and contingent on Indian 'origin'.

The Citizenship Act of 1955, in a manifestation of the most inclusive possible framework of citizenship, laid down that every person born in India on or after 26 January 1950, with some minor exceptions, was to be a citizen of India by birth. However, from 1 July 1987, that is, the date of enforcement of the Citizenship (Amendment) Act, 1986, which followed the Assam Accord, every person born in India could be a citizen of India only if *either of his/her parents was a citizen of India at the time of his/her birth.* Descent from parentage of Indian origin, thus, became an overriding consideration (Rodrigues 2005: 221–2). Simultaneously, we may recall from discussions in the previous chapter that the citizenship status of a large number of immigrants—those who came before 1966 and those who came between 1966 and 1971—was 'graded' so that those who had entered Assam between January 1966 and 25 March 1971 were disenfranchized for 10 years, to live in the state under conditions of deferred citizenship, and those who came after 25 March 1971 would be construed as illegal and deported. In 2003, we see alongside the transnational/overseas Indian citizen, the 'illegal migrant' figure in the Citizenship Act in the provision relating to citizenship by birth, making it exclusive and conditional. As mentioned earlier, while Section 3 following the amendment in 1986 dealing with 'citizenship by birth' provided for Indian citizenship to every person born in India after 26 January 1950, if '*either* of whose parents [was] a citizen of India at the time of his birth', the Amendment Act of 2003 restricted citizenship by birth to a person born in India only where '*both* of his parents are citizens of India; or one of his parents is a citizen of India and the other is *not an illegal migrant* at the time of his birth' (Section 3C, Citizenship (Amendment) Act, 2003).

The OCI may be seen as embodying several competing and dissonant strands of citizenship practices. One of these would explain/justify OCI as part of a global tendency towards transnational citizenship, stemming from the premise that the institution of citizenship as territorially inscribed had changed owing to rapid movements of population and burgeoning notions of international governance and regional cooperation. Seen in this way, the OCI may be seen as an encompassing moment since it transcends the limits imposed on citizenship by the territorially bounded membership of nation-states. The OCI may also

be seen as an attempt by several governments, especially those which have integrated into the hierarchical world economy as 'fast developing economies', to reach out to their diaspora in various ways, not least by opening up for them avenues of investment in their countries of origin. Yet, the OCI is only apparently transcendental citizenship, since even as it lifts the exclusion from Indian citizenship which the assumption of the citizenship of a foreign country brought to a PIO, it has continued the foreclosure for those who had made the choice of opting out of Indian citizenship in preference for Pakistani citizenship. Not only has the OCI sustained the original contexts of nation-state citizenship framed at the time of Partition, it also manifests the dominant political and ideological contexts of Hindutva within which the category was made effective, the official process of instituting the category having been completed by the BJP-dominated NDA government. As the following discussion will show, the overseas citizenship of India was marked as Hindu, since persons of Indian origin, wherever in the world they were, were seen as having an inextricable association with their *punya bhumi*, India.[3]

The Citizenship (Amendment) Bill of 2003, which first articulated the category of the OCI, followed the recommendations of the report of the High Level Committee on the Indian Diaspora. Headed by L.M. Singhvi, the Committee was set up in August 2000 to suggest the framework facilitating interaction with the Indian diaspora and their association with India in a 'mutually beneficial relationship'.[4] While emphasizing their vast numbers ('estimated to be about 20 million') and their wide distribution across the globe, the report carefully underscored the common identity of the diaspora: 'They live in different countries, speak different languages and are engaged in different pursuits. What gives them their common identity is their Indian origin, their cultural heritage, their deep attachment to India' (Report of the High Level Committee on Indian Diaspora [henceforth RHLCID] 2002: v).

It is significant that Overseas Indian Citizenship is referred to in the report as a 'new' *setubandhan*,[5] in other words, a bridge, which is

[3] The eagerness to include non-resident Indians (NRIs) or PIOs residing abroad has been a continuous feature of the Hindu Right and especially the Vishwa Hindu Parishad (Van der Veer 1996: 126; Deshpande 2003: 80).

[4] The Committee was set up on 18 August 2000 and submitted its report on 8 January 2002.

[5] The reference to an older setubandhan may, perhaps, be to the bridge purportedly built by the Hindu God Ram across the sea to reach Ravan's Lanka.

presented as a metaphor for emotional bonding and cultural back linkage. This setubandhan, the report never fails to reiterate, is in effect the affirmation of an existing/continuing natural bond, which the acquisition of citizenship of a foreign country and the subsequent renunciation of Indian citizenship has failed to excise. The report seems to disproportionately emphasize, therefore, the 'emotional needs' of the diaspora as the primary *justification* for dual citizenship, taking pains to dispel the notion that the OCI may have anything to do with material/ economic interest:

> We do not wish to advocate dual nationality only for diaspora remittances, important though they are to India's development.... The principal rationale of the demand of the diaspora for *dual citizenship*, however, is sentimental and psychological, a consideration which commends itself to the Committee in the same measure as do social, economic and political factors (RHLCID 2002: 510).

That the diaspora 'yearns' for close emotional ties and 'needs' them, is a constant refrain: '[They] have taken up the nationality of the country of their domicile but look upon their [Indian] passports with nostalgia'. That such unhappiness and sadness is a manifestation of natural and inextricable ties, deeply embedded in a 'continuous civilization', is stressed repeatedly. Under the heading 'Culture', the report notes the 'deep commitment to their cultural identity [that] has manifested in the component of the Indian diaspora, the members of the diaspora identify with Indians, equally the inheritors of the traditions of a continuous civilization'. The emphasis on continuity paves the ground for bringing the second generation of overseas Indians, that is, those who were not born in India, within the purview of overseas citizenship, for

> perpetuating and cementing the links of the younger generation of the diaspora with India as they will be keen to keep in touch with their elders in India as well as relate to their roots . . . The members of the Indian diaspora are naturally keen to pass on their value systems, which have been a reason of their success to coming generations, and they would welcome our country's support in this endeavour. India should also initiate measures to ensure that the diaspora's pride and faith in it are strengthened, which would inter alia revitalise its internal development (ibid: 511).

Interestingly, the debate in Parliament on the Citizenship (Amendment) Bill, 2003, under the NDA government, saw a reiteration of this emotional link and the diaspora's desire for closer ties. While moving the motion for amendment of the Citizenship Act in the Rajya Sabha after receiving the report of the Parliamentary Standing Committee on the

Bill, L.K. Advani, then Minister of Home Affairs, justified it not only on the grounds of the warm ties the diaspora 'continue to have with India and Indian culture', but also as a measure to bring the 'diaspora *closer to themselves and to India*'.[6] Manmohan Singh, then leader of the opposition in the Rajya Sabha, was quick to point out that the first steps in this direction were actually taken under the Congress government in 1995, when L.M. Singhvi was the Indian High Commissioner to the United Kingdom. He too emphasized emotional ties, which were made to appear as primary even while presenting the diaspora as 'a great national reservoir', whose 'knowledge, wealth, experience and expertise' could 'be tapped for the [country's] benefit'. That economic considerations were not secondary, though never allowed to take the foreground, is revealed from the fact that the Singhvi Committee recommended the setting up of Special Economic Zones (SEZs) exclusively for projects to be undertaken by OCIs, PIOs, and NRIs.[7]

Surprisingly, after the tribute to the expanse, numerical strength, and cultural cohesion of the diaspora, the Singhvi Report chose to confine the universe of Overseas Indian Citizenship specifically to certain North American, European, and Australasian (Australia, New Zealand, Singapore, and Thailand) countries, compelling the observation by Fatima Meer, a member of the African National Congress, that the OCI as articulated by the Singhvi Committee was nothing more than 'dollar and pound citizenship'.[8] The Singhvi report justified limiting the OCI to a few countries on the grounds that the sense of loss on giving up their Indian citizenship was more aggravated in this set of the Indian

[6] He recommended observing 9 and 10 December as Pravasi Bharatiya Divas, the first such event having already been organized on those days in 2003. Incidentally, 9 December is symbolic of 'return', associated with Gandhi's return that day from South Africa (Debates in the Rajya Sabha, 19 December 2003).

[7] Stating that the diaspora could be involved in the development of such zones, the committee report held that a dedicated single-window to provide consultancy services for overseas Indian investors was imperative for the success of this measure, and address issues of delays and procedural lapses. 'SEZs for NRIs mooted', *Hindu Business Line*, 9 January 2002; 'PM: Issue of dual citizenship resolved', *Tribune*, 9 January 2002.

[8] Fatima Meer made this observation at the first Pravasi Bharatiya Divas convention on 9 January 2003. V.S. Naipaul was also among the first to raise the issue of discrimination when the OCI was confined to a select group of 'rich' countries. See Rammanohar Reddy, 'Citizenship with Dollars and Pounds', *Hindu Sunday Magazine*, 19 January 2003.

diaspora: 'those are highly developed countries. It is to these countries that the migration of Indians took place *after India became independent*' (RHLCID 2002: 528) [emphasis added].

While the Singhvi Committee chose to limit the ambit of Overseas Indian Citizenship to the highly developed countries, where migration of Indians took place after independence, the modern history of migration from India actually began with the colonial period. The thrust on having independent India as a cut-off period, left out substantial sections of those who had migrated as indentured labour to plantation states of the British empire. The thrust on economic nationalism and the idea that an NRI population was an economic resource came in the 1980s, especially in response to the 'middle class success stories' of Indian immigrants in the West. Thus, the 2003 Act excluded earlier generations of migrants to the Asia-Pacific and to the Caribbean, as well as gulf migrants, choosing to recognize some forms of migration over others (Abraham 2003: 52–4). The excision of the colonial history of migration is evident from the manner in which the Singhvi Committee, while emphasizing the deterritorialization which the category of overseas citizenship was to bring, ventured also to invert the logic of imperialism. Stressing the completely transformed contexts and nature of the present day movement of population, from that which took place in the colonial context as subservient labour or colonial subjects, the Committee declared: 'the Indian diaspora spans the globe and stretches across all the continents. It is so widespread that *the sun never sets on it*'. (RHLCID 2002: 2) [emphasis added]. A substantial section of the Singhvi report also discussed the heightened security concern[illegible]wing terrorist attacks, especially that on the Indian Parliament building on 13 December 2001. This weighing of economic benefits against security concerns was resolved by leaving out the 'Muslims' from Pakistan and Bangladesh (Abraham 2003: 54).

A Bill to amend the existing Citizenship Act was introduced in the Rajya Sabha on 9 May 2003 and subsequently referred to the Standing Committee chaired by Pranab Mukherjee. The Citizenship (Amendment) Act, 2003 made several amendments to existing sections and inserted sections 7A, 7B, 7C, and 7D, entitled 'Overseas Citizens', dealing with the definition and registration of overseas citizens,[9] conferred specific

rights to them, while also identifying the rights that did not belong to them, and the conditions under which their registration could be cancelled. It is worth reiterating that while defining eligibility and what constituted Indian 'origin', the Act retained the contexts of Partition and the excision of those who had become Pakistani citizens (and later Bangladeshis). An amendment to the Citizenship Act, 2003, through an Ordinance issued in June 2005, allowed the scheme to cover PIOs in other countries as well—those who had emigrated after 1950 and were living in any country other than Bangladesh and Pakistan. The decision to extend the status to other countries is significant, since in 2005, the overseas Indians sent remittances to India of an estimated 21.7 billion dollars, more than what China (21.3 billion) and Mexico (18 billion) received. More than half such remittances were by Indians based in West Asia, with Kerala being the single largest beneficiary. It was only later, though, that the government announced a few measures to reach out to this large category of low-level, semi-skilled labour in West Asia, including easing of remittances facilities and the assurance of extending legal help to distressed workers and women, as well as the promise of granting voting rights, as overseas workers in most countries in the region are not accorded naturalized citizenship rights.[10] The Citizenship (Amendment) Act, 2003 and the Citizenship (Amendment) Act, 2005 provide for a variant of dual citizenship, since it does not provide the overseas Indian with an Indian passport, but with an overseas citizen card. At the fourth *Pravasi Bharatiya Divas* in Hyderabad in January 2006, the first two Overseas Indian Citizenship cards were distributed.

It is significant how the amendments of 2003 and 2005 fit into the discourse of transnationality associated with the promise of becoming an encompassing moment characterized by freedom from spatial constraints. Yet, not only is its assurance of transnationality suspect, but the promise of encompassment that the OCI seems to make is deceptive. Part of the deception, as clear from the above discussion of the Singhvi

[9] The Act provided that the Central government could, on application, register any PIO as an OCI if that person was from a country which allowed dual citizenship. A PIO was, in turn, a citizen of another country who (1) was a citizen of India on 26 January 1950 or at any time thereafter; (2) was eligible to become a citizen of India on 26 January 1950; (3) belonged to a territory that became part of India after 15 August 1947; (4) is the child or grand-child of a person described above; and (5) has never been a citizen of Pakistan or Bangladesh. Overseas Indian Citizenship does not entitle people who have acquired foreign nationality to retain their Indian passports.

[10] See the editorial notes in *Economic and Political Weekly*, entitled 'Overseas Indians: Citizenship and Other Rights' (2006: 172–3).

Committee report, emerges from the unconcealed cultural marking of the OCI status. The deception of transnationality is accentuated by the fact that the introduction of the OCI in the Citizenship Act interlocks with a consummation of a process of continuous unfolding of closures in the Act, which restrict citizenship by birth, a process that began with the 1986 amendment.

DUALITY OF CITIZENSHIP

While announcing the recommendations of the Singhvi Committee and the proposed introduction of a new category of the OCIs in the Citizenship Act, the then Prime Minister Atal Behari Vajpayee had declared: 'We are in favour of dual citizenship but not dual loyalty . . . Indians settled abroad should also have loyalty to those countries'.[11] Later, the Parliamentary Standing Committee did away with the requirement of an oath of allegiance for an OCI, arguing that allegiance to the Constitution could not be divided and the requirement would create problems with their primary citizenship.[12] In many ways, the statement by the Indian Prime Minister and the argument by the Standing Committee capture the anxieties that are invoked by transnational, dual, or multiple citizenships. The invocation of a state of primary belonging and membership based on 'blood', and the possibility of seeing this membership independent of patriotism and loyalty to the Constitution which alludes to the civic elements of citizenship, has a significant implication. It allows for envisioning a benign, non-threatening state of dual citizenship or transnational memberships, where a citizen can inhabit two worlds simultaneously, without causing any friction in the terms of membership which are demanded by each. Of these, if one were to recall the argument in the earlier section, it is the 'natural' and 'constitutive' world which offered back-linkages with the country of origin, whether in terms of rituals, practices, values, relationships, and family ties, and even in the idea of the 'home' country that was carried to the new lands. The assumption that this constitutive world could exist autonomously, juxtaposed onto the new world of 'primary residence and work', with each world calling for a different measure, content, and expression of belonging, has opened up the possibility of seeing the overseas citizen as inhabiting two worlds simultaneously without one impinging on the other. On

[11] 'PM: Issue of Dual Citizenship Resolved', *Tribune*, 9 January 2002.

[12] Report of the Parliamentary Standing Committee 2003 para 7.6.2, p. 13.

the other hand, the impossibility of compartmentalization of dual citizenship into apparently non-abrasive and friction-free worlds of affective belonging and belonging determined by work, respectively, has precipitated the 'crisis in citizenship' argument broached earlier in the discussion. Significantly, the 'crisis' in citizenship which has been seen as emerging from 'duality' of belonging and a subsequent weakening of bonds of solidarity and allegiance to the 'host'/'adopted' countries 'of work', has been addressed through amendments in citizenship laws in those countries. These amendments, quite like those in India, follow a trend towards congealing of ethnic bonds for the promotion of 'solid' citizenship.

Thus, the debates on citizenship in western countries over the last decade have shown that citizenship has increasingly become a vexed issue. Moreover, much of the strain on citizenship is seen as emanating from immigration as well as the expansion of the state through political and economic cooperation into regions with different cultures and experiences of citizenship. Most of the western countries have particular historical trajectories of citizenship and they pledge adherence to distinctive 'models' of citizenship. This is reflected in the claims to different defining characteristics of their citizenship ethos and institutional practices of citizenship, as also the manner in which they articulate or regulate transnational/dual citizenship. Yet, these claims to different models are not free from ambivalence. For example, the United Kingdom, despite its claims to multicultural citizenship, which is often counterpoised to the 'impersonal' public space in France, finds display of religious identity in public institutions equally difficult to grapple with. Moreover, 'culture' in all models may be acceptable so long as it entertains and can be exoticized without being considered equal. Not surprisingly, multicultural societies, while trying to come to terms with their post-colonial present, continue to mark out cultures as 'different', denying them not just coevality, but also differential treatment in state policies and citizenship practices, particularly those pertaining to immigration.[13]

The 'crisis' strand in the debates surrounding citizenship in receiving/host countries refuses to see dual citizenship as merely a liberal statement

[13] The linking of arranged marriages and forced marriages in a study conducted by the Home Office in the United Kingdom, and the policy decision to increase spouse visa age, for example, has been seen as affecting South Asian communities.

of choice limited to the relatively harmless or frivolous issue of what passport a person may want to travel on. It emphasizes, instead, the significance such choice holds for an immigrant and the ramifications it may have on transforming the institution of citizenship. All crisis arguments stem, therefore, from the premise that the institution of citizenship as territorially inscribed has indeed changed owing to rapid transnational movements of population and burgeoning notions of international governance and regional cooperation. There are, however, different perceptions of the manner in which the crisis is making itself manifest. Some strands have argued that citizenship of more than one state, including limited-rights citizenships in international and regional cooperative groupings and organizations, all of which transcend territorial limits of the state, have presented a challenge to the space of the state as the exclusive, necessary, and sufficient domain of citizenship. On the other hand, these challenges seem to arouse concern not only because they dislodge the state from being the exclusive spatial unit of membership, but also because these parallel and plural memberships are perceived as diluting the exclusive allegiance the nation-state hitherto drew from its members. The growth of dual citizenship, in particular, is seen as representing a major historical transformation whereby citizenship goes beyond exclusive allegiance to what has been called 'effective nationality', advocating the principle of ties to the land, rather than family and blood, as a more efficient and just principle of citizenship.[14]

While the anxiety around the issue of divided allegiance and loyalty have become more intense in the conjuncture of globality, especially when associated with so-called issues of global risks, for example, terrorism and the branding of certain communities as 'suspect', it is interesting to see how the concerns figured earlier, in the 'extraordinary' context of the First World War, over the question of dual citizenship that Americans of German origin could claim by virtue of the German Imperial and State Citizenship Law, which came into effect on 1 January 1914. In 1913–14, the new German legislation gave legal recognition to what may be seen as perhaps the first articulation of dual citizenship. In keeping with jus sanguinis and ethno-cultural belonging as the philosophical basis and practice of citizenship in Germany (Brubaker 1992; Green 2000), the citizenship law lay down that German citizenship is not lost or terminated by naturalization in another country, if previous consent

[14] The expression 'effective nationality' was used by the legal scholar Kim Rubenstein. See Saskia Sassen (2003) for details.

to retain it has been obtained from competent German authorities, before applying for a 'foreign citizenship'. Writing in the context of the First World War, responding especially to the implications of such a law, David Hill, the author of an article published in April 1918 in the *American Journal of International Law*, gives centrality to 'single allegiance' as a constituent element of citizenship in exchange for protection by the state. By willing to permit citizenship to continue in the country of origin, even when an additional citizenship had been acquired in another country, and recognizing that naturalized citizenship of a foreign country was compatible with citizenship of native country, the law gave what Hill called 'a new interpretation to citizenship', 'contrary to the generally accepted idea of a single allegiance'.[15] Examining what the new legal interpretation would mean for the institution of citizenship in the United States, particularly that of American citizens of German origin, the author argues that 'A "German American" is a political impossibility':

> A choice, free from all ambiguity, must be made, or citizenship does not exist at all. To profess to be both German and American is an act of equivocation that obscures the claim to be an American citizen in any acceptable sense. (Hill 1918: 361)

It is not surprising that the offer of dual citizenship through the retention of German citizenship in the extraordinary context of the First World War should have been seen by Hill as reflecting the military rationale of Germany, 'as a scheme for obscuring and confusing the obligations of citizenship' (Hill 1918: 360). Extending the argument of the political impossibility of being a *German* American, the author explores the risks emerging from the possibility of a person retaining German citizenship, even while expressing the intent of becoming a naturalized citizen of the United States. Since the retention of German citizenship is something which was not required to be made public, the information may not be divulged deliberately. The German American may, therefore, 'possess and exhibit American naturalization papers, and may at the same time possess and *conceal* a German certificate of citizenship', making his loyalty suspect (ibid: 362). Significantly, following this line of argument, the assumed concealment of German citizenship is seen by the author as preparing the ground for and justifying the denial of state protection for the concerned citizen. Protection, the author suggests, is the promise

[15] See David Jayne Hill (1918: 356–63) for details of the discussion around dual citizenship and citizenship by naturalization.

made by the state in return for exclusive and unequivocal allegiance: 'The relation implies a reciprocal obligation, on the one side to serve and on the other to protect. This obligation would be nullified entirely by a double allegiance, in case the aims and interests of the two countries to which allegiance is owed should conflict' (ibid: 360).

Within Germany, however, dual citizenship/nationality and citizenship by naturalization, both of which pertain to persons who are not of German origin, arouses intense political passions and conflicts. Despite large-scale immigration over the past decades, Germany's citizenship policy has been especially restrictive, with the result that children of non-citizens born in Germany remain non-Germans unless admitted to citizenship through naturalization. Significantly, as seen in the discussion in the previous section, this resonates in the contemporary changes in Indian citizenship. In 1999, Germany saw the passage of its first immigration law since 1913, the first ever to embody principles of jus solis. German citizenship laws have, however, remained steadfastly opposed to dual citizenship and, like India, make the acquisition of citizenship through naturalization dependent on the applicant's renunciation of his/her previous citizenship.[16] Arguments against dual citizenship are generally made on familiar grounds—that it would generate 'conflict of loyalty', 'hinder successful integration', and create 'legal uncertainties for the dual citizen'[17] while 'unfairly favouring dual nationals over *normal* citizens'.[18]

In countries that have accommodated dual citizenship in their laws,[19] that is, have allowed their citizens to hold citizenship of other countries, there has been, in recent times, a growing concern with what is seen as

[16] See for details Simon Green (2005). In his article on the 'Politics of Dual Nationality in Germany', Green analyses the political, cultural, and electoral factors underlying the opposition to dual citizenship in Germany. He argues that Germany, despite liberalization in its citizenship laws since 1999, discourages naturalization and continues to operate thereby in a broadly exclusive framework of citizenship.

[17] Such uncertainties may arise, it is argued, in inheritance law, over consular protection, or regarding national service, which may be only partially covered by bilateral agreements.

[18] A person holding dual or multiple citizenship, it is argued, is unfairly advantaged over the 'normal' single passport holding citizen, who, unlike the dual citizen, does not enjoy the privileges that accrue from being a citizen of more than one country.

[19] This form of dual citizenship is different from that which has been introduced in India through the 2003/2005 amendment. The notion of dual citizenship in India is like the German law. This other form of dual citizenship could be imagined as one in which an Indian citizen, residing in India and holding an Indian passport, may be allowed to be simultaneously the citizen of another country.

degeneration in a strong basis of citizen solidarity. Lamenting the 'decline of national citizenship' in the United States, a Working Paper by David Abraham (2002) submitted at the Centre for Comparative Immigration Studies in California compares citizenship regimes of USA and Germany, while making a case for 'citizenship solidarity' akin to the German model. Analysing the changes in the nature of citizenship in the United States over the last three decades, the author points at the shrinking gap between 'citizen' and 'resident alien', which, while indicating an easier access to American citizenship, was matched, however, by an overall decline in the content of citizenship. Unlike Germany, which would rather have large numbers of resident aliens and guest workers with limited rights than admit them to full citizenship, in the United States, the author argues, entrants to the country 'have long been presumed to be on the road to citizenship' (Abraham 2002: 28). Admission to citizenship is facilitated by 'a thin equal protection and mostly negative rights model of citizenship', comprising individual autonomy, legal equality, social mobility, equal protection, and anti-discrimination. These terms of inclusion weaken the solidarity aspects of citizenship, by paying 'little attention to the thin fabric of social and political rights', and trying merely 'to create many jobs and keep them relatively open to international labour'. Significantly, while making a case for moving towards a thick and solidarity-based model of citizenship, the author identifies two aspects of German citizenship which he considers worth emulating: *social integration through schooling*, which would enable children to 'develop important bonds and feelings of identification with Germany and the German way of life'; and *a welfare state guided by the distributive logic of closure*, not of market state openness, 'to take care of its own ... a kind of safe house in which to shelter members from the outside world'.[20]

Another set of articles, which, while making a case for solid citizenship, presents a framework for more 'complete' integration of immigrants with

[20] The author follows Michael Walzer, who proposed what might be called a boundary condition: The idea of distributive justice presupposes a bounded world within which distributions take place—a group of people committed to dividing, exchanging, and sharing social goods, first of all *among themselves*. Michael Walzer, 1983, *Spheres of Justice*, New York: Basic Books, p. 31 (Abraham 2002: 1–2).

their host countries, through full citizenship rights which foster truly representative democracies and 'political integration'. Like Abraham's paper discussed above, which makes a case for a 'solidarity' and 'thick' model of citizenship to correct the incoherent legal-individualism of liberal citizenship, especially in the context of free flow of international migrant labour, the arguments in this set also call for robust citizenship. Unlike Abraham, however, who sees legal integration as insufficient and inadequate for solid citizenship, and argues for social integration through education in the 'American' way of life, social closure, and redistribution to promote solidarity, this set of articles does not see legal integration as inadequate for solid citizenship, nor closure as a remedy for insufficient integration. Looking at the problem of what may be called deferred citizenship of large numbers of foreigners who have worked for several years in European countries and legally qualify for citizenship, but have not become naturalized for various reasons, Tomas Hammar (1985) argues that it is the presence of large numbers of 'permanent immigrants without citizenship' that is anomalous to democratic citizenship. This anomaly was a result of low rates of naturalization, which could, however, be corrected by promoting dual citizenship, which would enable citizens to retain emotional ties and other benefits that their original citizenship bestowed on them. On the other hand, the increase in dual citizenship would foster their political integration in the country of residence as well as 'effective nationality', making way for truly representative political democracies (ibid: 438–50). Arguing that 'double/multiple ties' and 'complex loyalties' are a feature of the modern world, Martin and Aleinikoff (2002) propose that dual citizenship ought not be seen as 'bigamous' and irreconcilable with national interests. The growth in dual nationality, they argue, 'presents more opportunities than dangers, freeing individuals from irreconcilable choices and fostering connections that can further travel, trade and peaceful relations'. The chances of conflicting loyalties, moreover, are mitigated by 'increasing convergence of state interests, built around commitment to democracy and the free market, along with the decline of conscription and interstate war' (ibid: 81).

Most of the debate on dual citizenship in Europe, the problem of dual allegiance, and social and political integration is exclusionary, since its frames of reference are largely constituted by the movement of (European) population within Europe. In a way, then, the thrust of the debate also manifests the fortification of Europe as a Union, both in terms of a region and its people, as well as the referential domain within which problems of duality and incomplete citizenship may be resolved. Whenever the

terms of reference shift to population flows from non-western countries, citizenship gets reaffirmed and re-inscribed in exclusionist terms, emerging yet again as the bastion on which the nation-state asserts its sovereignty and fortifies itself against 'hordes of starving people', who put to test the 'universalism' of citizenship through an assertion of their difference. In an article, Francis Fukuyama (2006) sees the integration of immigrant minorities—particularly those from Muslim countries—as citizens of pluralistic democracies as the 'more serious longer-term challenge facing liberal democracies', particularly in countries of Europe which have large Muslim populations. Arguing that the problem of integration manifests the failure of the old multicultural model, Fukuyama proposes that the multicultural model be replaced by more energetic efforts to integrate non-western populations into a common liberal culture.

Prominent threads within the crisis argument see pressures of dual or multiple, conflicting, and competing (cultural) identities, contributing to a dissonance between political membership and cultural ties, which segments and enfeebles citizenship. Overlapping and competing identities, the argument goes, have led to a decline in 'national identity', posing the question of primary identity in terms of a solidarity that 'might dare claim legitimately to demand the sacrifice of some individual and most competing collective identities' (Abraham 2002: 1–2). Arguing that *boundaries* and *bonds* stand in some determinate relationship to each other, they invoke Walzer's conception of a 'community of character, destiny, and purpose' to show that multiple memberships have led to a condition where people live 'in a patchwork of communal identities which can occupy the same geographic space and in which the public realm may bring together people who have no common felt identities'.[21] Such a condition is described as the domination of the 'pluribus', or life in a federation rather than a community, no longer national, no longer based on soil and place, but more likely diasporic or cosmopolitan. Such a condition is seen as even more aggravated in terms of lack of solidarity and community, since societies are no longer (even) lands of immigrants. Rather, they are 'one node in a post-national network of diasporas',[22] where belonging is multiple and variously institutionalized,

[21] David Jacobson, *Rights Across Borders*, Baltimore, 1997, p. viii, cited in Abraham (2002: 3).

[22] Appadurai avers that, 'Where soil and place were once the key to the linkage of territorial affiliation . . . key identities and affiliations now only partially revolve around the realities and images of space'. Now 'diaspora runs with, not

with 'the country of origin becoming a source of identity, the country of residence a source of rights, and the emerging transnational space, a space of political action combining the two or more countries'.[23]

In the case of France, with a republican model of citizenship embedded in the notion of jus solis, changes in nationality laws in the 1990s required people to 'become French' through a 'declaration of [such a] will' when they turned 18. While the idea of *becoming* French is not contradictory to the French notion of the nation, following Renan, as a 'daily plebiscite', critics have argued that the change brought in 1993 is not a manifestation of the republican principle and the civic nation, but has to do more with a requirement of allegiance for children of 'foreign origins' and concerns around building a consensual national identity. The political controversy that was generated in France around Muslim school girls wearing headscarves to school, the subsequent concerns regarding the nature of citizenship being taught at schools, and the anxieties around growing tensions in the universalism of the political community constitutes one expression of the 'crisis' (Duchesne 2005; Delphy 2005).

It is interesting also to see how changes in British Nationality Laws since 1948 have shifted from a position where the articulation of Commonwealth citizenship ascribed common status to all persons who were citizens of independent countries within the Commonwealth, giving the Commonwealth citizen a more advantageous position under the law of the United Kingdom in comparison with that of the alien. From 1962, the Commonwealth citizen was placed at par with the alien except for the fact that she/he had political rights.[24] While the shift shows a loss of status for the Commonwealth citizen, plural citizenship continues to be accepted under the British Nationality Act, 1981. Yet,

against the grain of identity, movement, and reproduction'. 'Diaspora' seems to now be construed 'not as an exile from which one will eventually return but rather as a kind of post-national, multicultural hybridity, one is tempted to say a cosmopolitanism for Everyman. It is important to be dubious. The world may look more like this when seen from the platinum elite frequent-flyer lounge than when seen from the polyglot streets'. See Appadurai (1993: 796, 798, 803).

[23] Kastoryano sees transnational activity in several forms, including a focus on the 'home' country, Europe, and even Islam (2000: 311).

[24] Until 1962, the Commonwealth citizen had complete freedom of entry and movement in the United Kingdom and, in addition, the right to be registered as a Citizen of the United Kingdom and the Colonies within a single year of ordinary residency prior to application. In 1962, the period was changed to five years as in the case of aliens. See, for details, Cedric Thornberry (1965).

the question of integration of minorities is seen in terms of a crisis in the multicultural model, calling for a more liberal political culture, which is predisposed to individual rather than group autonomy.[25] On the other hand, the move towards greater European political integration has paradoxically raised questions pertaining to a common European political identity and ethno-cultural identities at the national level.

It would be pertinent to mention here that the recent amendments in the citizenship laws in India, which recognized overseas citizenship for persons of Indian descent, removed all references to Commonwealth citizenship that had persisted from the Citizenship Act of 1955. It is interesting that the special status of Commonwealth citizenship was seen as the 'main feature' of the British Nationality Act, 1948 and a manifestation of 'last maternal clutching at a fragmenting family' (Thornberry 1965: 197). For the Indian Citizenship Act of 1955, the recognition of Commonwealth citizenship in Sections 5, 11, and 12 was not, as Thornberry would have us believe, an affirmation of the 'quality of being a British subject', but rather a demonstration of *reciprocity among independent states* in matters of conferment of citizenship. The First Schedule of the Act of 1955 lists the Commonwealth countries (including Pakistan), whose citizens would have the status of a Commonwealth citizen in India and the Indian government could provide, 'on a basis of reciprocity', for the conferment of all or any of the rights of citizens of India on the citizens of countries specified in the list. Evidently, the shift in both the countries (United Kingdom and India) in the recognition of common status, in one case through dilution and the other through excision, denotes not merely the declining significance of the Commonwealth relationship, but also shifting priorities of where the future frameworks of solidarity lie. In

[25] In an article in 2005, Bill Kirkman, an Emeritus Fellow of Wolfson College, Cambridge, points out questions like 'Which is higher ranking, an earl or a marquis?' or identifying two out of four given numbers those that could be used to call emergency services, or questions about the jury system, which form part of the sample questions which people seeking British citizenship may be expected to know an answer to. The main aim of the test and the policy which has produced it appear to be to produce a situation in which all citizens feel that they belong to British society, especially in the context of serious inter-racial tensions in Birmingham, England's second city. Yet, Kirkman raises doubts about the relevance of the sample questions in the citizenship test, some of which may be trivial and others which may demand answers of the kind that 'vast numbers of longstanding citizens' and citizens by birth 'would flounder in that task' (Kirkman 2005).

many ways, it demonstrates how the basis of commonality in national-citizenship is being re-defined in both countries and how these countries are relocating themselves vis-à-vis their pasts, selecting and sieving, to pave the way for the citizenship of the 'future'.

The category of the overseas citizen not only signifies persons inhabiting two spheres of citizenship simultaneously, but perhaps, much like globality, a conjuncture of volatility and motion, where the contours of the flows and tendencies are identifiable, yet their direction remains ambivalent. The notion of a crisis in citizenship, which dominates the conjuncture, emanates from the destabilization that is seen as occurring in national citizenship owing to movements of populations. While there is an attempt to hold together the flock by advocating transnational citizenship based on descent, there is, on the other hand, a countervailing trend towards 'effective nationality' based on notions of community founded on association with land and bounded territories, Yet, in both cases—where descent is prioritized, and the other where land is seen as a more effective criterion of solidarity—the resolution of the crisis seems to lie increasingly in closure. Thus, despite the widening of the scope of citizenship through the insertion of the category of overseas citizenship in the recent amendments in the Citizenship Act in India, the principles underlying the shift, read with the other changes that have been introduced in the law, show the principle of jus sanguinis or descent and blood ties becoming significant. While bringing in the category of overseas citizenship, Indian citizenship after the amendment may convey that citizenship is not to be confined to or associated with territory and membership within specific state boundaries, connoting thereby, transnational or de-territorialized citizenship. However, the fact that it is inextricably tied up with descent makes its transnationality suspect. In parts of Europe and the United States, where land is being proposed as a more effective basis of nationality, the conjuncture has similarly thrown up practices of exclusion, fortifying territorial boundaries, so that entry to the land itself is open only selectively. Moreover, the manner in which the crisis in citizenship is increasingly being understood, as in Fukuyama's and other analyses, the terms of membership, in a quest for solid citizenship, may well move away from democratic citizenship to hegemonic integration.

DEBATE ABOUT SONIA'S GANDHI'S CITIZENSHIP

The debate around Sonia Gandhi's citizenship is significant for examining the dissonance between the legal frameworks of citizenship—in her case, citizenship acquired through registration—and the philosophical

underpinnings of citizenship, which had also been unfolding in the various amendments to the Constitution. On 18 April 2007, the Supreme Court issued notices to the Central government and the Election Commission of India on a petition filed by Rashtriya Mukti Morcha (RMM), a non-governmental organization. The RMM was challenging the Delhi High Court judgment dismissing its petition on whether a person of foreign origin could be appointed to hold a public office. With the Supreme Court's notices to the Central government and the Election Commission office, the debate on Sonia Gandhi's 'foreign origins' was raked up once again. About five years ago, when the issue was first brought into public debate, questions were raised about the legality of her citizenship and, by implication, the legitimacy of her holding the highest political office in the country in future. The legal validity of Sonia Gandhi's citizenship by registration was subsequently established and public expressions of suspicion on that count seemed to have ebbed. Suggestions for constitutional changes to prevent persons of foreign origin from holding important public offices continued to be made intermittently, however, from one forum or the other. Sonia Gandhi's own responses to such suggestions did not attempt to dispel the ethnic or natural born basis for legal citizenship, which the proposals for change emphatically proposed. On the contrary, her responses to those who questioned her citizenship placed her in consonance with the thinking that there was something 'natural' about being an Indian citizen. Demonstrating her 'Indianness', in her dress and her demeanour, Sonia Gandhi also disclosed in interviews that she 'felt' Indian. Coupled with this were the persistent reminders that having 'suffered' personally as a widow, she had a share in the legacy of 'sacrifices' which the Nehru–Gandhi family had made for the nation.

The two judgments on the question of Sonia Gandhi's citizenship came in response to election petitions made before the High Courts of Allahabad and Delhi respectively, challenging her suitability for political office in the context of the recently concluded general elections to the Lok Sabha in September/October 1999, in which Sonia Gandhi contested and won from the Amethi constituency in Uttar Pradesh. The election petition filed in the High Court of Allahabad was dismissed. It had been filed by three petitioners—Hari Shanker Jain and Hari Krishan Lal, who had contested and lost the election, and a voter/elector, Prem Lal Patel. While dismissing the petition, the High Court ruled that the 'respective election petitions did not raise any triable issue before the High Court; that the pleadings were lacking in precision and were vague, unspecific, ambiguous, irrelevant, and, to some extent, also scandalous, and hence

amounted to abuse of the process of the Court; and that the pleadings did not disclose any cause of action worth being tried by the High Court ...'. While Prem Lal Patel, the voter, submitted to the High Court ruling, the two contestants, Hari Shankar Jain and Hari Krishan Lal, filed an appeal to the Supreme Court under Section 116-A of the Representation of the People Act, 1951 (*Hari Shankar Jain* v. *Sonia Gandhi* AIR 2001 SC 3689: para 1).

The petitioners challenged the validity of Sonia Gandhi's citizenship under Section 5(1)(c) of the Citizenship Act (on the ground of her having married Rajiv Gandhi, an Indian citizen), stating that she, being an Italian citizen, did not satisfy the pre-requisites for entitlement to registration as an Indian citizen. The petitioners also questioned the constitutional validity of Section 5(1)(c) itself. The defence counsel focused largely on legal issues pertaining to whether the courts could interfere in electoral matters and, in particular, whether a matter of citizenship of an elected candidate could be raised as an election petition before the court. Like the High Court, the Supreme Court dismissed the petitions of Hari Shankar Jain and Hari Krishan Lal on the ground that the 'election petition filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made by them in the election petition do not satisfy the requirement of pleading of material facts ...' (ibid.: para 33).

Interestingly, the legal deficiency of the petitions in terms of 'lack of evidence' pertained to the petitioners' specific allegation regarding the validity of Sonia Gandhi's marriage to Rajiv Gandhi and her citizenship by registration under Section 5(1)(c) of the Citizenship Act, allegations which the petitioners sought to buttress by stating 'true to personal knowledge' as the grounds. While the courts dismissed the allegations as 'bald assertions', it commented especially on the charge regarding the validity of Sonia Gandhi's marriage as not just 'infirm and deficient' but also 'scandalous'. Significantly, it praised Hari Krishan Lal, the second petitioner, who, unlike the first petitioner, did not dispute the validity of Sonia Gandhi's marriage and, in fact, 'admits, in the pleading itself, the respondent to be wife of Shri Rajiv Gandhi and states her as resembling an 'ideal Indian woman' bearing 'an excellent and good exemplary character'. The court goes on to redeem the first petitioner on this count, however: 'Hari Shankar Jain, in fairness to petitioner we must say, did not press and pursue this "allegation" at the hearing before us' (ibid., para 29).

The other petition which came before the Supreme Court was made in the High Court of Delhi in 1999 by the RMM. The burden of the petition was to plead that Article 5 of the Constitution of India pertaining to citizenship ought to override the Citizenship Act and the right to hold public office may, therefore, accrue only to 'natural born citizens of India'. While both this and the earlier petition came in the context of elections and raised issues concerning citizenship, the earlier petition made Sonia Gandhi a direct respondent. The petition by RMM had the Union of India (Home Affairs) and the Election Commission of India as the direct respondents. The impleadment of Sonia Gandhi and the Indian National Congress as respondents was dismissed after P.N. Lekhi, the counsel for the petitioner, contended that the issues raised by him were general in nature and were not against 'particular individual or particular political party as regards the controversy raised in the petition whether a non-naturally born citizen can hold an elected office or any public office' (*Rashtriya Mukti Morcha* v. *Union of India and Another* [WPC No. 2960/1999 and CM No. 9837/2005]: para 2).

The arguments put forward by the petitioner's and the defense counsels, respectively, and the judgment which followed, threw up significant and contending articulations concerning the nation as a political community and citizenship as its foundational principle. Significant considerations pertaining to what indeed was the defining core of citizenship—ethnic or civic belonging—and whether the constitutional provisions marking the commencement of citizenship at the birth of the republic should have primacy over a mere Parliamentary statute, came up for contention. In the process, notions of differential inclusion and hierarchical citizenship were proposed, as the category 'natural born citizens' imported from the American context was put before the court for its consideration.

It is significant how the counsel for the petitioner confined the 'fundamental concept of citizenship' (ibid.: para 2) to the moment of the birth of the Indian nation, which, he argued, took place with the Indian Independence Act of 1947. Interestingly, while the petitioners were willing to let the birth of the Indian nation be determined by a statute enacted by an imperial regime, they were not inclined to give similar position of privilege to the citizenship law enacted by the Indian Parliament in 1955: '... the concept of India as a nation only started after coming into force of the Indian Independence Act, 1947 and, therefore, that fundamental concept of citizenship cannot be whittled down by any Act much less citizenship Act' (ibid.). In another example of self-contradiction, the counsel for the petitioner, while pleading for the attribution of an overriding position to Article 5 of the Constitution, went on to argue that since 'no effective and

actual debate took place in the Constituent Assembly as was done at the time of framing of the American Constitution' (ibid.), and that 'in the absence of any background of understanding, [on the] matter pertaining to citizenship by the Members of the draft Constituent Assembly and in view of the vast majority of people being ignorant and illiterate, not effective debate on the subject took place' (ibid.). On the basis of these arguments, the petitioners claimed that the delegation of power by the Constitution to the Parliament through Article 11 could not, therefore, be seen as imposing a control on the Constitution, even as they argued for the primacy of constitutional provisions on citizenship.

While upholding the supremacy of Article 5 of the Constitution and simultaneously denying the delegation of power entailed in Article 11, the counsel proceeded to make a case for differential citizenship based on the principle of birth. Taking recourse to a speech in the Constituent Assembly by Alladi Krishnaswami Ayyar, who emphasized the importance of having 'some provision as to citizenship at the commencement of the Constitution', to avoid the 'difficulties connected with the holding of particular offices, and even in the starting of representative institutions in the country under the republican constitution', the petitioner's counsel contended that not every elector qualified to contest—'only such elector can contest who [can] satisfy the definition of citizen as provided under Article 5 of the Constitution ...' (ibid., para 13). The petitioner argued that the Constitution, in fact, made a distinction between 'naturalized citizen and a citizen who had become citizen on account of registration ... our laws provide two kinds of citizenship; one is *ad hoc citizen* and another is *permanent citizenship*' (ibid., para 28, [emphasis added]). That permanent citizenship and political rights associated with it accrued only to 'natural born citizens', was argued as follows:

> ... cultural and historical genes are not possible in a foreign born person. Therefore, in the absence of knowledge of local experience, traditions, social history, which can be possessed by a natural born citizen cannot be possessed by a foreign born person. Therefore the genetic connection with the soil cannot be had by a person who does not have a genetic connection to the country of adoption. A natural born has firm roots, understands the flow of the language, the cultural, historical, economical, political diversity in comparison to a person who was not born in a country but had been granted citizenship under the statute. (ibid., para 34)

Such a person, the argument followed, could 'enjoy civic rights but not political rights' (ibid., para 64).

Dismissing the petition, the Supreme Court evinced faith in the Parliament's 'wisdom' while enacting the Citizenship Act and abstained from what it called 'legislating in the guise of interpretation of the statute' while trying to read 'legislative intention or the intention of the Constitution'. While upholding legislative competence in the matter, the Court proceeded to carve out a civic and cosmopolitan understanding of the nation and citizenship counterpoised to the ethnic 'natural' citizenship model proposed by the petitioner:

> Nationalism was the basis of the arguments advanced by the petitioner that a person who is foreign born will not have the ethos, cultural background, the philosophy, which would be possessed by the son of the soil [sic] has forgotten that it is the joint willingness of the persons, natural born or foreign born who owe their allegiance, whatever cause they profess and are involved with the political philosophy of a State that creates a nation and a nation is entitled to live with all such persons who owe their allegiance to the State. (ibid., para 101)
>
> ...
>
> If one has to follow the liberal and humane concept of ancient Indian philosophy, then what our scriptures have taught us is 'vasudhaiv kudumbkam', i.e., the whole planet earth is a family. When this is the ethos of the nation and our people which has such benevolent concept then any narrow parochial meaning de hors the provisions of law would amount to holding what is not even in the philosophy of this soil also. (ibid., para 105)

The legal wrangling and political posturing on Sonia Gandhi's citizenship may be seen not merely as contests over the citizenship of a particular person, but part of a larger ideological framework within which citizenship continues to be placed in a specific relationship with the state. While the state continues to dominate this relationship by determining who belongs and on what terms, we have seen that socio-historical changes have often intervened to give this relationship a degree of dynamism. Yet, even when this dynamism has manifested itself, as in 'citizenship beyond the state' or transnational forms of citizenship, citizenship laws have followed the 'crisis in citizenship' arguments, to bring the state back in. More recently, as was discussed in the introductory chapter, there has been an attempt to move away from state-centreed formulations of citizenship to examine it as a complex of multiple experiences based on local, regional, and transnational affiliations (Holston 1999: 169). A study of the 'performative elements of citizenship' as a way of making room for manoeuvre, to emancipate oneself from the state, through illegalities or other 'active' citizenship

practices in urban centres, has also found favour among scholars (Gordon and Stack 2007: 117; Holston 2008). A number of insightful works on cities as the 'locus of citizenship development' and the 'sites' where distinctive experiences of citizenship have been fashioned have come in this wake. Thus, for Trevor Stack, his study of Sierra de Tapalpa in West Mexico offered an insight into the unique sense of belonging that the city may give to the people, different from their sense of belonging to the nation. This distinctive experience of belonging was shaped by their conversations about their town's history as well as their participation in commemorative rituals and civic activities (Gordon and Stack 2007: 118). We have discussed in the introductory chapter, the emphasis placed by T.H. Marshall on the civil, social, city, and community-based aspects of citizenship, which in the course of their development alongside the economic impulses emerging from capitalism become dependent on the capitalist state as a resource for rights (Marshall 1950). James Holston, in particular, looks at cities, which, in the context of global urbanization, become volatile, 'crowded with citizens and non-citizens who contest their exclusions'. In such a context of volatility, he argues, 'citizenship is unsettled and unsettling' (Holston 2008: 3). Taking the case of Brazil as 'paradigmatic', Holston argues that Brazilian citizenship is typical in the way it illustrates 'a type of citizenship that all nations have at one time or another developed' and which remains 'among the most common'. This citizenship is typified as one in which the state manages social differences by 'legalising them in ways that legitmate and reproduce them' through a regime of 'legalised privileges and legitimated inequalities' (ibid.: 3–4). On the other hand, even amidst the most entrenched regimes of unequal citizenship, can emerge what Holston calls 'insurgent citizenship' that 'destabilises the entrenched'. In the margins of the cities of Brazil, since the 1970s, insurgent citizens, movements have emerged in the articulations of citizenship by the working classes. It is 'the experiences of these peripheries—particularly the hardships of illegal residence, house building, and land conflict' which become both the 'context and substance of a new urban citizenship' (ibid.).

In the next chapter, which forms the conclusion of this work, I shall be looking at some aspects of this urban citizenship, examining both the 'entrenched' and the 'insurgent' to show the multiple experiences of citizenship through two specific cases. I shall also tie up the arguments that have come up so far, to locate yet again the ways in which migration figures in the states' and people's practices of citizenship.

4

Cities, Residual Citizens, and Social Citizenship

Despite the fact that movement has been an inseparable aspect of human existence, the migrant, as an unsettled and floating category, has remained the perpetual citizen-outsider. Moreover, the migrant is itself a paradoxical category—in that it is not only produced by state practices of rule, which include political, social, economic, and developmental policies and practices, but in that the migrant has to be continually slotted out and simultaneously included on differential terms. Thus, the displaced, the vagrant, the footloose migrant, the stateless person, etc. have all led a precarious existence, criminalized at certain times and subjected to perpetual relocation and rejection at others. In the last several years, as mentioned in the introduction, the working class, essential for providing different kinds of services to the 'city', has come to be seen as a 'threatening' presence. The 'cleansing and beautification' drives and politics of 'spatial purification' have become surrogates for an affirmation of the claims of the middle class over public spaces. The proximity of the working class to middle-class colonies in large metropolises has been sought to be excised through factory closures, slum evictions, and so-called relocations, creating a category of citizen-outsiders, a residual category of citizens, perpetually on the move in search of stable livelihood.

The figure of the migrant perhaps produces the maximum anxieties around which discourse of 'crisis of citizenship' are woven. It is

interesting how in all citizenship models[1] and citizenship practices, migration has increasingly been seen as having ramifications that produce a 'crisis in citizenship'. Some models see migration, particularly the inflow of diverse peoples, as weakening the sense of 'commonality' or 'social bonds' that produce solid citizenship expressed in active participation of citizens in public life. Others see it as reflecting a major historic transformation, whereby citizenship has shifted from exclusive allegiance to family and descent to what has been called 'effective nationality', advocating the principle of land as a more efficacious and just principle of citizenship. All models do, however, see migration as leading to or being symptomatic of processes of social exclusion and incomplete, inadequate, or discriminatory citizenship, which have been characteristic of the social and economic transformations that have taken place since the 1980s, in the context of the structural adjustments sustaining the capitalist world economy.

The ways in which the 'crisis in citizenship' has been addressed has been largely ambivalent. If one were to look at the different constituent elements of citizenship, namely, civil, political, social, and cultural, and the corresponding structures of the state (the courts, Parliament, the welfare apparatus of the state), as well as policies of the state that give expression to or guarantee them, one finds that 'social exclusion' has been integral to developmental and social action planning and legislation. On the other hand, there is recourse to laws, political practices, and social policies that more emphatically than ever before mark out, externalize, and criminalize the outsider, so much so, that migration emerges as an unfolding process of progressive deprivation, dispossession, and disenfranchisement.[2]

[1] While in the Republican tradition, the tearing of the social fabric is regarded as particularly serious because social solidarity in the sense of a 'social bond' and social solidarity between the individual and society expressed in the active participation of the citizen in public life is central to it, the liberal tradition sees citizenship as a social contract based on equal rights by all individuals. The latter tradition views social integration in terms of freely chosen relationships between individuals, and migration leading to incomplete, distorted, or discriminatory citizenship.

[2] Since the 1980s, the social exclusion framework has become influential for understating the 'problem' of 'new poverty' associated with technological change and global economic restructuring. The social exclusion framework allows an understanding of migration through an integrated and dynamic analytical framework that reveals the 'processes, agency, and multidimensionality of disadvantage'. It, moreover, allows for the broadening of the notion of deprivation by bringing together diverse manifestations and multiple causes in the form of historically emergent interlinked patterns, namely, political, social, cultural, and economic. This historical analytical framework is especially useful for exploring the gender dimensions of migration since it incorporates the various aspects of exclusion and the diverse ways in which it makes itself manifest. Such an approach is especially important since it enables us to see the relationship between migration and marginalization in terms of multidimensional and multilinear historically emergent processes. The notion of social exclusion is more pertinent as a conceptual tool precisely because it offers a way of integrating loosely connected notions such as poverty, deprivation, lack of access to goods, services, and assets, and precariousness of social rights. The concept of social exclusion enables a better understanding of poverty as a process that involves multiple agents as well as institutions. Focusing on the 'processes of impoverishment' rather than on the poor facilitates the 'causal analysis' of the phenomenon as well as a perception of the interplay between its material and non-material dimensions.

The legal–political measures to address the 'crisis', as seen in the discussions in the previous chapters, concern themselves with the authorization and control of entry and movement. Freedom of movement and residence, a right reserved for legitimate citizens, is being increasingly affirmed in citizenship laws in most countries. As the discussion earlier in this work has shown, from 1947 to 2005, there have been several layers of expansion and simultaneous/synchronous contraction of legal–formal frameworks of citizenship in India. Unlike its incorporation at the moment of commencement of the republic, migration in 1986 and 2003, as incorporated in the Citizenship Act, was explicitly associated with illegality. In 1986, the first amendment in the Citizenship Act in India was made in the context of the long standing dispute over Bangladeshi migrants in Assam. The amendment put in place a sixth category of Indian citizenship, applying exceptionally to Assam and set in motion parallel systems of identification of 'migrants', deferring citizenship in some cases and conferring illegality on others. In 2003, an amendment in the Citizenship Act inserted the category of the overseas Indian citizen to recognize de-territoriality of Indian citizenship. Ironically, however, coincident with the legal affirmation of transnational citizenship of India, the association of Indian citizenship with descent was simultaneously affirmed, with citizenship by birth becoming stringent and conditional. While the Citizenship Act of 1955 laid down that every person born in India on or after 26 January 1950 was to be a citizen of India by birth, the Citizenship (Amendment) Act,

1986 provided that every person born in India would be a citizen of India if *either of whose parents was a citizen in India at the time of his birth*, prioritizing, thereby, descent from parentage of Indian origin. The late 1990s saw further entrenchment of trends towards a notion of citizenship marked by blood ties and cultural ascriptions, with the principle of jus sanguinis or blood assuming primacy over the principle of jus solis or birth. The Citizenship Amendment Act of 2003 made citizenship by birth conditional, restricting it to a person born in India, where '*both of his parents* are citizens of India; or one of his parents is a citizen of India and the other is *not an illegal migrant* at the time of his birth' (Citizenship Amendment Act, 2003, Section 3C).

Judicial pronouncements on the issues concerning migrants, we have seen, have been ambivalent. While declaring the IMDT Act (1983) unconstitutional, in its judgment delivered on 12 August 2005, the Supreme Court described migration not only as 'illegal' entry into foreign territory, but also as an act of aggression, arguing within a discursive framework that makes for a bounded notion of citizenship, with the policing of boundaries and the determination of citizenship construed as a significant manifestation of state sovereignty. While the judgment cast a web of suspicion around all Bengali-speaking Muslims in Assam and the rest of the country, more generally it has to be seen in the context of implications for political rights and the vicious cycle of violence, continual relocation, dispossession, and disenfranchisement experienced by migrants. Interestingly, the category 'migrant' has a specific connotation, whereby it marks the 'livelihood movement' of only the working class poor, who are subjected to discrimination and violence at the hands of both the state agencies and society. The movement for work and education of the rest of the city dwellers is assumed to be 'normal' and not characterized as migration at all.

Court decisions have exhibited a shift in their position towards the urban poor, most of them migrants who earn a meagre living working in the unorganized sector. From looking at migrants as people who belong to the city and have a right to claim access to its resources, especially a dwelling place, the courts have moved to a position where they are viewed as unwanted encroachers and a burden on the city's resources.[3] In the *Olga Tellis and Others* v. *Bombay Municipal Corporation and Others* case (AIR 1985 SC 180) decided on 10 July 1985, the Supreme Court

[3] Usha Ramanathan (2004) has documented the shifts in the language and perceptions of the judiciary in the context of slum dwellers.

emphasized, for the first time, that the right to life and, therefore, to livelihood was linked to the dwelling place. Ironically, however, even as the Supreme Court attested to a relationship between life, livelihood, and the dwelling place, it rejected the petitioners' plea to hold on to their dwelling place and upheld Bombay Municipal Corporation's (BMC) decision to remove 'encroachments on the footpaths or pavements' as procedurally correct, as well as just and fair. The petitioners in this case were pavement and slum dwellers in Bombay, residents of Kamraj Nagar, a *basti* which was said to have come up in about 1960–1 near the Western Express Highway, Bombay, and dwelling structures constructed off the Tulsi Pipe Road, Mahim, Bombay. The PUCL, Committee for the Protection of Democratic Rights, and two journalists also joined in the writ petitions. In 1981, the respondents—the State of Maharashtra and the BMC—decided to evict slum dwellers and 'encroachers' and deport them to their native home towns and villages or to places outside the city of Bombay. Upon the demolition of the pavement dwellings, the petitioners challenged the action of the BMC in the Bombay High Court. The High Court ruled that the petitioners could not claim any fundamental right to put up huts on pavements or public roads, asking them to vacate the huts by 15 October 1981.

In their appeal to the Supreme Court challenging the High Court ruling, the petitioners argued that demolition of the pavement dwellings and slum hutments deprived them of the right to livelihood guaranteed by Article 21 of the Constitution and that it was constitutionally impermissible to characterize the pavement dwellers as 'trespassers' because their occupation of pavements arose from economic compulsions. The Supreme Court judgment wavered between, on the one hand, its recognition of the compulsions in the lives of migrant workers, the 'filth and squalor' in the slums and pavements dwellings, and the failure of the city's master plan to take into account the need to redistribute the cityspace and, on the other hand, its recognition of the BMC's duty to reclaim public spaces for what the court saw as legitimate public use. The judgment, delivered by Chief Justice Chandrachud, began with the following portrayal of 'the plight of lakhs of persons who live on pavements and in slums in the city of Bombay':

> They constitute nearly half the population of the city. . . . The first group of petitions relates to pavement dwellers while the second group relates to both pavement and Basti or Slum dwellers. Those who have made pavements their homes exist in the midst of filth and squalor, which has to be seen to be believed. Rabid dogs in search of stinking meat and cats in search of hungry rats keep

them company. They cook and sleep where they ease, for no conveniences are available to them. Their daughters, come of age, bathe under the nosy gaze of passers by, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other's hair. The boys beg. Menfolk, without occupation, snatch chains with the connivance of the defenders of law and order; when caught, if at all, they say : 'Who doesn't commit crimes in this city?' It is these men and women who have come to this Court to ask for a judgment that they cannot be evicted from their squalid shelters without being offered alternative accommodation. They rely for their rights on Article 21 of the Constitution which guarantees that no person shall be deprived of his life except according to procedure established by law. They do not contend that they have a right to live on the pavements. Their contention is that they have a right to live, a right which cannot be exercised without the means of livelihood. They have no option but to flock to big cities like Bombay, which provide the means of bare subsistence. They only choose a pavement or a slum which is nearest to their place of work. In a word, their plea is that the right to life is illusory without a right to the protection of the means by which alone life can be lived. And, the right to life can only be taken away or abridged by a procedure established by law, which has to be fair and reasonable, not fanciful or arbitrary such as is prescribed by the Bombay Municipal Corporation Act or the Bombay Police Act. They also rely upon their right to reside and settle in any part of the country which is guaranteed by Article 19(1)(e). (*Olga Tellis and Others v. Bombay Municipal Corporation and Others*)

The judgment illustrated compulsions in a pavement dweller's life by tracing the trajectory of migration of two petitioners. One of these, P. Angamuthu, was a landless labourer in his home town, Salem in Tamil Nadu, who was rendered jobless because of persistent drought. Angamuthu migrated from Salem to Bombay in 1961 in search of employment and found a job in a chemical company in Dahisar, Bombay, on a daily wage of Rs 23 per day. A slum-lord extorted a sum of Rs 250 from him in exchange for a shelter of plastic sheets and canvas on a pavement on the Western Express Highway, Bombay, where he lived with his wife and three daughters, who were 16, 13, and 5 years of age. The second pavement dweller had a similar life story. He came to Bombay in 1969 from Sangamner, in the Ahmednagar district in Maharashtra. He was a cobbler earning 7 to 8 rupees a day, but had to leave his home in search of employment in Bombay when his house in the village collapsed. He got employment in Bombay as a *badli kamgar* (temporary/ad hoc/substitute worker) for Rs 350 per month. He was able to obtain a 'dwelling house' on a pavement in Tulsiwadi by paying Rs 300 to a goonda of the locality, which he bolstered with bamboos and plastic sheets—costing him an additional Rs 700.

Significantly, the court turned to the writings of sociologists, using them as evidence to reject the charge made by the state government in its affidavit that slum and pavement dwellers were habitual criminals, exhibiting 'especial criminal tendencies':

According to Dr P.K. Muttagi, Head of the unit for urban studies of the Tata Institute of Social Sciences, Bombay, the surveys carried out in 1972, 1977,1979 and 1981 show that many families which have chosen the Bombay footpaths just for survival, have been living there for several years and that 53 per cent of the pavement dwellers are self-employed as hawkers in vegetables, flowers, ice-cream, toys, balloons, buttons, needles and so on. Over 38 per cent are in the wage-employed category as casual labourers, construction workers, domestic servants and luggage carriers. Only 1.7 per cent of the total number is generally unemployed. Dr Muttagi found among the pavement dwellers a graduate of Marathwada University and Muslim poet of some standing. 'These people have merged with the landscape, become part of it, like the chameleon', though their contact with their more fortunate neighbours who live in adjoining high-rise buildings is casual. The most important finding of Dr Muttagi is that the pavement dwellers are a peaceful lot, 'for, they stand to lose their shelter on the pavement if they disturb the affluent or indulge in fights with their fellow dwellers'. The charge of the state government, besides being contrary to these scientific findings, is born of prejudice against the poor and the destitute. Affluent people living in sky-scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But, they get away. The pavement dwellers, when caught, defend themselves by asking, 'who does not commit crimes in this city?' As observed by Anand Chakravarti, 'The separation between existential realities and the rhetoric of socialism indulged in by the wielders of power in the government cannot be more profound.' (The judges cited from 'Some Aspects of Inequality in Rural India : A Sociological Perspective', published in *Equality and Inequality, Theory and Practice*, edited by André Béteille, 1983.)

Yet, after having painstakingly woven the right to livelihood into the fundamental right to life and their critical relationship with the right to a dwelling, the judges stopped short of recognizing the petitioner's claims to public spaces in the city. Instead, it held that 'the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life' conformed to the 'norms of justice and fairplay' and instructed the state government to 'make good' its various assurances of rehabilitating the evicted petitioners:

Having given our anxious and solicitous consideration to this question, we are of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of encroachments on the footpaths

or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust. (*Olga Tellis and Others* v. *Bombay Municipal Corporation and Others*: para 41)

Ten years later, in *Chameli Singh and Others* v. *State of U.P. and Another*, decided in 1996 (1996 AIR SCW 542), a bench of three judges of the Supreme Court held that the right to shelter was a fundamental right available to all citizens and it was read into Article 21 of the Constitution as encompassing, within its ambit, the right to make the right to life more meaningful:

In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. . . .

Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. (*Chameli Singh* v. *State of U.P. and Another*: para 8)

In the same year, in the *Ahmedabad Municipal Corporation* v. *Nawab Khan Ghulab Khan and Others* case (AIR 1997 SC 152), decided on 11 October 1996, the Supreme Court admitted an appeal against the Gujarat High Court's decision to put a stay on the removal of encroachments by 'pavement dwellers in unauthorized occupation of footpaths of the Rakhial Road in Ahmedabad, a main road of the city'. Quite like the *Olga Tellis* case, the Supreme Court decided:

It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of his living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude right of the effective content and meaningfulness but it would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the Constitutional objectives. (*Ahmedabad Municipal Corporation* v. *Nawab Khan Ghulab Khan and Others*)

The Court also directed the Municipal Corporation to observe its 'constitutional and statutory duty to provide means for settlement and residence by allotting the surplus land under the Urban Land Ceiling Act and if necessary by acquiring the land and providing house sites or tenements, as the case may be, according to the scheme formulated by the Corporation', and by evolving appropriate schemes.

In both the cases, in the course of articulating the rights of the worker who migrated to the city in search of a livelihood and found a dwelling on the pavements or in the slums, the Supreme Court did two things. It enlarged the scope of the right to life, but, at the same time, hedged it with a pre-existing limit—'the procedure established by law'. Thus, the two municipal corporations were seen as performing their legal duties in removing encroachments from public land. It is interesting, however, that in neither of the two judgments was the expression 'encroachment' used in a way so as to impute an intention (of encroaching) onto the slum and pavement dwellers. On the other hand, encroachment emerges as a condition and an outcome of a series of compelling circumstances in the life of a migrant worker. Moreover, while justifying the removal of encroachments, the courts instructed the municipal corporations of Bombay and Ahmedabad, as well as the two state governments, at length on the various programmes of rehabilitation that were to be made available to the migrant worker on removal of his dwelling place. Yet, in both the judgments, there was a discernable chastisement of the municipal bodies for having 'allowed the encroachment to endure long enough to make it the basis for a claim for rehabilitation'.

In the Olga Tellis case, the Supreme Court 'established' that, 'no person has a right to encroach by erecting a structure or otherwise on footpaths and pavements or other place reserved or earmarked for a public purpose like (for e.g. garden or playground)'. Similarly, in the *Ahmedabad Municipal Corporation* case, it affirmed:

No one has a right to make use of a public property for the private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments

on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians. (para 7)

This indictment was followed by instructions to the Ahmedabad Municipal Corporation:

... the Corporation should always be vigilant and should not allow encroachments of the pavements and foot paths. As soon as they notice any encroachments they should forthwith take steps to have them removed .... It is stated in their affidavit that they are giving 21 days notice before taking action for ejectment of the encroachers. That procedure, in our view, is a fair procedure .... But the Commissioner should ensure that everyone is served and if it is not possible for reasons to be recorded in the file, through fixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not given opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians. (*Ahmedabad Municipal Corporation* v. *Nawab Khan Gulab Khan and Others*, para 20)

It is interesting how in the years that followed, PILs by residents' welfare groups from middle class colonies pulled up their respective state governments for failing to free public spaces of 'encroachments', with the Supreme Court upholding their appeal and instructing governments to remove encroachments for reasons different from those given in the cases discussed earlier. Unlike the earlier judgments, where the court saw 'encroachment' as an inadvertent consequence of migration in search of livelihood and a condition manifesting the vulnerability of the migrant, in its decisions upholding petitions by middle class environmental groups and residents' welfare groups, the Supreme Court gave centrality to the *illegality of encroachment*, dissociating it from its sociological contexts. In the PIL of *Almitra H. Patel* v. *Union of India* (AIR 2000 SC1256), the Supreme Court ordered the Delhi government and other authorities to remove 'slums and unauthorized colonies' on 'public' land, dispossessing an estimated 35 lakh people. The court termed the slum dwellers 'encroachers' whose 'illegitimate' claim to land in compensation against dispossession from their jhuggis amounted to 'pickpocketing' the tax payer. The Court stated that '(t)he promise of free land at the tax payers' cost, in place of a jhuggi is a proposal which attracts many land grabbers. Rewarding an encroacher on public land with a free alternative site is like giving a reward to a pickpocket' (ibid.: 4). The Delhi High Court judgment in *Pitampura Sudhar Samiti* v. *Government of National Capital Territory of Delhi*[4] (applicable to 'Anna Nagar'), delivered on 27

[4] Writ petition Nos 4125/95, CWP 4215/1995.

September 2002, was a common judgment in 63 different petitions, filed by the middle class community through their respective residents' associations, complaining against 'JJ Clusters' (jhuggi jhopri clusters) in and around their residential areas, which decided the fate of the slums in Delhi. In the case of the eviction of the slums around Yamuna Pushta, one sees how the slum dwellers were seen not just as a threat to the adjoining middle class colonies and the city in general, but the threat was magnified and projected on to the nation itself. This threat perception emerged largely from the fact that a section of the slum dwellers was also the 'illegal/Muslim/migrant'. During the demolition of jhuggis in Yamuna Pushta in 2004, the inhabitants who tried to get back to their dwellings—which were in flames—to retrieve their belongings were beaten and abused by the police: '*Nawab ka mahal jal raha hai kya? Bhhago yahan se!*' ('Is the Palace of the Emperor in flames? Leave this place!') The police struck them on their stomachs with lathis to make them flee. Another man was told:. '*Nawab ho kya? Pakistan Bhaago!*' ('Are you an Emperor? Leave for Pakistan!') (Padhi 2007: 73–92).

For the migrants in the city, the experience of migration is one of progressive dispossession, which includes disenfranchisement. In September 1994, for example, the Election Commission issued a notification to the authorities of certain constituencies in Delhi to identify 'outisders', 'illegal migrants', or 'foreign nationals' and delete their names from the electoral rolls. Following the notification, the Electoral Registration Officer (ERO) having jurisdiction over the polling station covering the Jhuggi Jhopri Basti in Sanjay Amar Colony, in the Matia Mahal Assembly constituency of Delhi, directed about 17,000 of its poor, illiterate residents, mostly Muslims—whose names figured in the electoral rolls of the polling station—to appear before the ERO with documentary evidence of their nationality. The ERO refused, however, to accept copies of their ration cards, jhuggi tokens issued by the Delhi Administration, and letter's from their native village Pradhans/legislators (which they possessed) and, instead, asked for copies of their passports, citizenship certificates, or birth certificates. In early 1995, as a result of this special revision, the names of 16,454 voters were removed from the electoral roils.[5] While the Supreme Court quashed the

[5] Following this removal, PUCL, Delhi, Mahila Jagriti Samiti, and some affected persons filed a writ petition in the Supreme Court, which found the procedure adopted by the ERO to be unreasonable, unconstitutional, and violative of statutory provisions and principles of natural justice. The Supreme Court quashed the proceedings of the ERO as well as the Election Commission's order of September 1995.

proceedings of the ERO and the Election Commission's directive, another revision was carried out equally arbitrarily in 1998, removing the names of 12,000 persons from the electoral rolls.

Labelled 'outsiders' by the judiciary, media, and policymakers, the women among the urban poor and working class are affected especially and in multifarious ways. Not only are they pushed out of the electoral process, they face repression from state machinery and constant police surveillance, which, impacts their lives at home, in the community and the labour market, increasing their vulnerability (Padhi 2007). In June 2007, for example, on the intervening night of 20/21, police from the Kotwali Police Station attacked the Bengali Basti in Sanjay Amar Colony in Delhi and arrested about 100 residents, including women and children, flouting all norms, as evident from the following:

1. There were no policewomen present in the police party.
2. The police used obscene, vulgar, and abusive language.
3. The people were repeatedly beaten with lathis while being rounded up from their jhuggis, at the police chowki, and while boarding on and off the trucks transporting them to the police station.
4. At the Kotwali Police Station, while going up to the second floor, the policemen positioned on the staircase hit them all along.
5. Obscene questions were asked about male–female relations within the family.
6. They were hit on their private parts, on the back, arms, and legs.

The above was evident in the following verbatim account of the arrest:

> On 20/21 June, night, Neela heard knocks and shouts outside her Jhuggi. On opening the door, she, her husband Arif, her sister Seema, mother Alia and brothers Bittoo and Vicky were rounded up by the police. As there was no woman police, the women were unwilling to go to the police chowki. There were 10–15 policemen there. Mansab Ali, one of the constables, on finding the women unwilling to go to the police chowki, slapped them and hit them with his lathi. When they were taken to the chowki, they saw that 25–26 women resident of the Colony were already there. From the Chowki they were taken to Kotwali where there were about 125 persons. Whosoever among them spoke Bangla, was badly beaten up. The women and children were released the next day. The men were sent to Fateh Puri Rain Basera. . . . Same treatment was meted to Neela, wife of Siraj, and their two sons and daughters. While Neela and kids were released, the husband was detained in Fateh Puri Rain Basera. Earlier, on 16 June 2000, 4–5 persons were rounded up for interrogation. They are now lodged in the Beggar's Home at Lampur Border (PUCL 2000).

When the PUCL team went to Fatehpuri night shelter, they were refused permission to enter and talk to inmates. From the grilled gates, however, the team members could see women and children too lodged inside the shelter.

While the urban poor is extracted from the 'relevant' citizenry and converted into inconsequential residues to be evicted and (sometimes) relocated through urban planning and judicial pronouncements, it is indeed ironical that they figure integrally in much of the debate around social citizenship, manifesting the contradiction between citizenship and social class. Social citizenship is understood as certain enabling conditions that assume for each citizen 'equal social worth, not merely equal rights' (Marshall 1950: 24), involving both recognition of claims and corresponding redistribution of resources, as well as assuring minimum supply and access to economic resources and means of livelihood, which are assumed to be the common possession of the community. The idea of social rights derived historically from the establishment of the welfare state and corresponding notions of how the state—in particular, public and political institutions and the economy—ought to be organized for the assurance of welfare. The idea of social citizenship marked a process whereby the egalitarian promise of citizenship, in order to envelope every single individual, was to be consummated in the social domain also. In this domain, each individual, despite the raging inequality of a capitalist society, could feel secure as a member of the political community, which valued equality, and a state that took upon itself the responsibility of supplying such securities to the citizens. It is in this domain of social rights that Marshall saw an immanent conflict brewing between the imperative of the market economy to make profit and the demand of citizenship for equality in the social domain, compelling him to admit that the contradictory impulses of capitalism and citizenship were more than evident in the development of social rights in the twentieth century: '... it is clear that in the twentieth century, citizenship and the capitalist class system have been at war' (Marshall and Bottomore 1992: 18). While Marshall's observations about the contradiction came from the experience in Britain, they were to hold true and become more starkly relevant for Britain and other countries from the 1980s. The suspicion that is built around entitlement to benefits as part of social rights of citizens—coupled with the emphasis on self-enterprise and self-reliance, which has become central to a neo-liberal understanding of responsible citizenship—has resulted in the articulation of a two-tier hierarchical articulation of citizenship as passive and active, with an emphatic class and ethnic/racial bias. Citizenship based on entitlements and rights has been criticized for producing passive citizens who are

divested of economic initiative, are content to survive on minimal resources, and who, through their dependence on the state, put a strain on public expenditure. The emphasis on obligations rather than rights as the basis of active and, by implication, solid and worthwhile citizenship has been informed by a strong rejection of claims by the working-class poor—often from the immigrant population—to public resources, guided by an enduring belief that those with the capacity to contribute/participate more, would receive greater rewards. Arguments in favour of active citizenship, defined as above, overlook that it was not just welfare programmes and social rights that incurred expenditure. Ensuring civil and political rights involve their own set of institutions and related expenditure, such as the police, courts, prisons, etc. (Riley 1992).

It may be argued, therefore, that welfare and social rights ultimately involve a political question and need to be sustained by the power of the democratic ideal they embody. It is interesting how ownership of property—the archaic principle that defined solid citizenship and was a primary requirement for citizenship for most of citizenship's history, whether in the classical republican model or liberal bourgeois model—continues to determine the experience of citizenship for the working class/migrant poor. It is also significant that within the realm of social citizenship, political and economic rights tend to interweave and interlock so that one form of deprivation leads viciously to another. Thus, the denial of social rights does not take place alone; it is effectively a consummation of a process of exclusion where the closures that are embedded in the institutional practices of citizenship are made manifest through a range of graded and differential categories and corresponding lived experiences of citizenship.

In this context, it is important to see the differential experiences of citizenship of the large mass of the working poor—the 'residual citizens' in the cities—who are more likely to be dispensed with in the 'new geographies' constituted by global cities. As mentioned in the introduction, much of this new geography is constituted by a disenfranchised and dispossessed work force, which is administered and regulated as 'populations'. Ironically, ideas of social security and welfare technologies generated by the state come in response to the large-scale displacement, dispossession, and proletarianization brought about by the breakdown of rural economies, crisis in agriculture, and the taking over of agricultural and mineral-rich land in rural and tribal areas by the state for setting up of industrial units and export processing zones. The distress migration from rural areas has, since the 1980s, been in the nature of an exodus. Most of the time, the exodus is of those who are already in a state of marginality. In this context, if one were to look at the figures given by the Andhra Pradesh government's Land Committee Report,[6] one can see that the poor have progressively lost control over land and the SCs and STs—among whom the majority were in the category of small or marginal farmers and a substantial number were agricultural labourers—have been the most affected. The report points out that not only has the average landholding of the SCs and STs declined in the years between 1961 and 1991, about one lakh people belonging to the SCs have lost land ownership. Of the people who are able to work, only 12 per cent are holding land, which has decreased from 23 per cent in 1961. On the other hand, the percentage of agricultural labourers increased from 57 per cent in 1961 to 72 per cent in 1991.

Significantly, since the 1990s, the rate of distress migration in most states has also increased. In the case of Andhra Pradesh, for example, the exponential growth in out-migration from Andhra Pradesh to Mumbai and other parts of Maharashtra has been pointed out earlier in this work. The 'Bus to Mumbai', as P. Sainath (2003) chose to title one of the series of essays that he wrote on the exponential rise in out-migration from Andhra Pradesh, has become a metaphor for the continual flow of population from regions gripped by agrarian crisis, dispossession, and land-alienation. While the shift in the ideology and practice of citizenship has been seen in this work from the manner in which the migrant has figured in Indian citizenship laws, it is important to note that this shift is part of the larger socio-political transition occurring in the country. In many ways, therefore, the category of the migrant—which made its way into the citizenship law in 1986 and figured again in 2003—manifests a cycle of dispossession, dislocation, and disempowerment that has been occurring within the country with increasing intensity from the 1980s. If one were to look at the process of migration as it has unfolded over the last 20 years, one sees it as leading from one form of dispossession to another, each distancing the migrant from access to resources. Moreover, since, in the present context of liberalization, most new jobs are contingent, casual, and informal, in many cases involving the denial of the right to form unions for collective bargaining and struggles, wage labour has, in fact, become the basis of social exclusion and differential citizenship (Barchiesi 2007).

[6] Report of the Land Committee appointed by the Andhra Pradesh government, headed by Municipal Administration Minister Koneru Ranga Rao, which submitted its report in 2006.

Interestingly, social policies have remained constrained and compelled by the requirement to work with fixed, stable, and precise categories, so much so that social service benefits under the proposed Social Security Bill may not accrue to the vast number of migrant workers, especially seasonal/short duration migrants who do not have fixed domicile and constitute about 20–30 million and 5–8 per cent of the work force. Moreover, it is not just the social security cover that is denied. It is also political citizenship, which is also dependent on certain principles of governmentality that demand enumeration and identification of the citizen-voter, that is denied to the migrant worker. A primary requirement for enumeration as citizen–voter is residence, which implies that the citizen-voter must be identifiable with a stable address. Since most migrants are, as P. Sainath terms it, 'locked into endless step-by-step migrations', and almost all migrant workers tend to be concentrated in clusters of villages within certain districts, large numbers of rural poor, as well as certain seats and regions, get excluded from the electoral process.[7] While protective policies and inclusion in welfare schemes for migrants are needed, the latter cannot be a matter for bureaucratic edict alone or a matter of charity. A more political approach to migrants' rights—which requires a framework of protection against exclusion as well as breaking new grounds of inclusion, through a consolidation of the interests of migrants and their expression, politically, in terms of rights—is, therefore, required. Ultimately, migration has to be seen in terms of the process, agency, and multidimensionality of exclusion, leading to thwarted citizenship.

Interestingly, the National Authority for Unique Identity set up under the aegis of the Planning Commission with Nandan Nilekani as its chairman, is entrusted with the responsibility of preparing the National Population Register (NPR) and issuing multi-purpose national identity cards to all citizens. The suggestions for issuing identity cards had also been made by the Singhvi Committee for reasons of national security. The project was initiated in 2002 by the NDA government, and materialized

[7] Moreover, as Sainath points out, there are some specific periods in the survival cycle of migration, when the migrants are most likely to be out of their villages. The months of April and May, when the 14th general elections (April–May 2004) were held, were ironically the months when absences from villages are at their peak. At a deeper level, thus, economic processes and policies that have devastated the rural economy are also responsible for the political exclusion of the rural poor, posing the question whether institutionalized certainties by themselves are sufficient for a democratic electoral process.

in 2009 under the UPA government. While detractors have seen this project as illustrative of the surveillance mechanism of the state, the UPA government has pushed it as an essential programme for facilitating its flagship welfare schemes including the NREG Scheme, Sarva Shiksha Abhiyan, National Rural Health Mission, among others, to ensure that the schemes reach the intended and genuine target population.

Significantly, the preparation of the NPR, which is already underway, was provided for by the Citizenship Act (through the insertion of Section 14 A, with effect from December, 2004) and the Citizenship Registration of Citizens and the issue of National Identity Cards Rules of 2003. The new insertion made the registration of all citizens of India, the issue of national identity cards, the maintenance of a national population register, and the establishment of a national registration authority by the Central government, compulsory. What is important to note, as Usha Ramanathan points out, is that the requirement of the creation of the NPR and compulsory registration of the population, being undertaken under the Citizenship Act and Rules, unlike the Census Act, does not protect the privacy of the citizen.[8] On the other hand, it allows for a sharing of information, so that the biometrics collected during the preparation of the NPR, would feed into the UID database, and perhaps also network with other national databases including the National Intelligence Grid (NATGRID). Indeed, when seen in the context of the shifts in the basis of citizenship as manifested in the Citizenship Amendment Act 2003/2005, the national population register may well portend not just a strict legal regime for sifting out non-citizens, but a bar-coded relationship between the state and citizens, characterized by increased surveillance, subjection, and control.

[8] See Usha Ramanathan, 'Implications of registering, tracking, profiling', *The Hindu*, 5 April 2010, p. 8. Ramanathan rightly points out that the Citizenship Rules which require that each citizen act as an informant for the state, making it the citizen's duty to ensure that every member of the family above the age of 15 gets registered in the population register, and keeps the state informed and updated, erodes the principle of popular sovereignty.

Appendix I

The State of Punjab v. *Ajaib Singh and Another*

10/11/1952 DAS, SUDHI RANJAN DAS, SUDHI RANJAN SASTRI, M. PATANJALI (CJ) MUKHERJEA, B.K
BOSE, VIVIAN BHAGWATI, NATWARLAL H.
CITATION: AIR 10 1953 SCR 254

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 82 of 1952. Appeal under art. 132 (1) of the Constitution of India from the Judgment and Order dated June 10, 1952, of the High Court of Judicature for the State of Punjab at Simla (Bhandari and Khosla JJ.) in Criminal Writ No. 144 of 1951.

M. C. Setalvad (Attorney-General for India) and C. K. Daphtary (Solicitor-General for India) (B. Ganapathy, with them) for the appellant.

J. B. Dadachanji (amicus curae) for respondent No. 1.

Judgment

DAS J.-This appeal arises out of a habeas corpus petition filed by one Ajaib Singh in the High Court of Punjab for the production and release of one Musammat Sardaran alias Mukhtiar Kaur, a girl of about 12 years of age.

. . . . On the report made by one Major Babu Singh, Officer Commanding No. 2 Field Company, S. M. Faridkot, in his letter dated February 17, 1951, that the petitioner Ajaib Singh had three abducted persons in his possession, the recovery police of Ferozepore, on June 22, 1951, raided his house in village Shersingwalla and took the girl Musammat Sardaran into custody and delivered her to the custody of the Officer in charge of the Muslim Transit Camp at Ferozepore from whence she was later transferred to and lodged in the Recovered Muslim Women's Camp in Jullundur City.

A Sub-Inspector of Police named Nibar Dutt Sharma was deputed by the Superintendent of Police, Recovery, Jullundur to make certain enquiries as to the facts of the case. The Sub-Inspector as a result of his enquiry made a report on October 5, 1951 to the effect, inter, that the girl had been abducted by the petitioner during the riots of 1947.

On November 5, 1951, the petitioner filed the habeas corpus petition and obtained an interim order that the girl should not be removed from Jullundur until the disposal of the petition. The case of the girl was then enquired into by two Deputy Superintendents of Police, one from India and one from Pakistan who, after taking into consideration the report of the Sub-Inspector and the statements made before them by the girl, her mother who appeared before them while the enquiry was in progress, and Babu alias Ghulam Rasul the brother of Wazir deceased who was said to be the father of the girl and other materials, came to the conclusion, inter alia, that the girl was a Muslim abducted during the riots of 1947 and was, therefore, an abducted person as defined in section 2(a) (1) of the Abducted Persons (Recovery and Restoration) Act LXV of 1949. By their report made on November 17, 1951, they recommended that she should be sent to Pakistan for restoration to her next of kin but in view of the interim order of the High Court appended a note to the effect that she should not be sent to Pakistan till the final decision of the High Court.

The matter then came before a Tribunal said to have been constituted under section 6 of the Act. That Tribunal consisted of two Superintendents of Police, one from India and the other from Pakistan. The Tribunal on the same day, i.e., November 17, 1951, gave its decision agreeing with the findings and recommendation of the two Deputy Superintendents of Police and directed that the girl should be sent to Pakistan and restored to her next of kin there.

The habeas corpus petition came up for hearing before Bhandari and Khosla J.J. on November 26, 1951, but in view of the several questions of far-reaching importance raised in this and other similar applications, the learned Judges referred the following questions to a Full Bench:

1. Is Central Act No. LXV of 1949 ultra vires the Constitution because its provisions with regard to the detention in refugee camps of persons living in India violate the rights conferred upon Indian citizens under Article 19 of the Constitution ?

2. Is this Act ultra vires the Constitution because in terms it violates the provisions of Article 22 of the Constitution ?

3. Is the Tribunal constituted under section 6 of the Act a Tribunal subject to the general supervision of the High Court by virtue of Article 227 of the Constitution? At the same time the learned Judges made it clear that the Full Bench would not be obliged to confine itself within the narrow limits of the phraseology of the said questions. On the next day the learned judges made an order that the girl be released on bail on furnishing security to the satisfaction

of the Registrar in a sum of Rs. 5,000 with one surety. It is not clear from the record whether the security was actually furnished.

The matter eventually came up before a Full Bench consisting of the same two learned judges and Harnam Singh J. In course of arguments before the Full Bench the following further questions were added:

4. Does this Act conflict with the provision of Article 14 on the ground that the State has denied to abducted persons equality before the law or the equal protection of the laws within the territory of India?

5. Does this Act conflict with the provisions of Article 15 on the ground that the State has discriminated against abducted persons who happen to be citizens of India on the ground of religion alone?

6. Does this Act conflict with Article 21 on the ground that abducted persons are deprived of their personal liberty in a manner which is contrary to principles of natural justice? There was also a contention that the Tribunal which decided this case was not properly constituted in that its members were not appointed or nominated by the Central government and, therefore, the order passed by the Tribunal was without jurisdiction.

By their judgments delivered on June 10, 1952, Khosla and Harnam Singh JJ answered question 1 in the negative but Bhandari J. held that the Act was inconsistent with the provisions of Article 19(1) (g) of the Constitution. The learned Judges were unanimous in the view that the Act was inconsistent with the provisions of Article 2.2 and was void to the extent of such inconsistency. Question 3 was not fully argued but Bhandari and Khosla JJ. expressed the view that the Tribunal was subject to the general supervision of the High Court. The Full Bench unanimously answered questions 4, 5 and 6 in the negative. Bhandari and Khosla JJ. further held that the Tribunal was not properly constituted for reasons mentioned above, but in view of his finding that section 4(1) of the Act was in conflict with Article 22(2), Harnam Singh J. did not consider it necessary to express any opinion on the validity of the constitution of the Tribunal.

The Full Bench with their aforesaid findings remitted the case back to the Division Bench which had referred the questions of law to the larger Bench. The case was accordingly placed before the Division Bench which thereafter ordered that Musammat Sardaran alias Mukhtiar Kaur be set at liberty. The girl has since been released.

The State of Punjab has now come up on appeal before us.

. . . . We accordingly heard arguments on the constitutional questions on the clear understanding that whatever view we might express on those questions, so far as this particular case is concerned, the order of the High Court releasing the girl must stand. After hearing arguments we intimated, in view of the urgency of the matter due to the impending expiry of the Act, that our decision was that the Act did not offend against the provisions of the Constitution and that we would give our reasons later on. We now proceed to set forth our reasons for the decision already announced.

. . . The main contest before us has been on question 2 which was answered unanimously by the Full Bench against the State, namely, whether the Act violates the provisions of Article 22. If the recovery of a person as an abducted person and the delivery of such person to the nearest camp can be said to be arrest and detention within the meaning of Article 22(1) and (2) then it is quite clear that the provisions of sections 4 and 7 and Article 22(1) and (2) cannot stand together at the same time, for, to use the language of Bhandari J., 'it is impossible to obey the directions contained in sections 4 and 7 of the Act of 1949 without disobeying the directions contained in clauses (1) and (2) of Article 22.' . . . The absence from the Act of the salutary provisions to be found in Article 22(1) and (2) as to the right of the arrested person to be informed of the grounds of such arrest and to consult and to be defended by a legal practitioner of his choice is also significant. The learned Solicitor-General has not contended before us, as he did before the High Court, that the overriding provisions of Article 22(1) and (2) should be read into the Act, for the obvious reason that whatever may be the effect of the absence from the Act of provisions similar to those of Article 22(1), the provisions of Article 22(2) which is wholly inconsistent with section 4 cannot possibly, on account of such inconsistency, be read into the Act. The sole point for our consideration then is whether the taking into custody of an abducted person by a police officer under section 4 of the Act and the delivery of such person by him into the custody of the officer-in-charge of the nearest camp can be regarded as arrest and detention within the meaning of Article 22(1) and (2). . . .

. . . A perusal of the sections referred to above will at once make it plain that the reason in each case of arrest without a warrant is that the person arrested is accused of having committed or reasonably suspected to have committed or of being about to commit or of being likely to commit some offence or misconduct. It is also to be noted that there is no provision, except in section 56, for acquainting the person to be arrested without warrant with the grounds for his arrest. Sections 60 and 61 prescribe the procedure to be followed after a person is arrested without warrant.

. . .

Turning now to Article 22(1) and (2), we have to ascertain whether its protection extends to both categories of arrests mentioned above, and, if not, then which one of them comes within its protection. There can be no manner of doubt that arrests without warrants issued by a court call for greater protection than do arrests under such warrants. The provision that the arrested person should within 24 hours be produced before the nearest Magistrate is particularly desirable in the case of arrest otherwise than under a warrant issued by the court, for it ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him. In the case of arrest under a warrant issued by a court, the

judicial mind had already been applied to the case when the warrant was issued and, therefore, there is less reason for making such production in that case a matter of a substantive fundamental right.

. . . This circumstance also lends support to the conclusion we have reached, namely, 'that the taking into custody of an abducted person under the impugned Act is not an arrest within the meaning of Article 22(1) and (2). . . . By this Act, the Legislature provided that the recovered Muslim abducted person should be taken straight to the officer in charge of the camp, and the Court could not question the wisdom of the policy of the Legislature. After the Constitution, Article 22 being out of the way, the position in this behalf remains the same.

. . . There can be no doubt that Muslim abducted persons constitute a well-defined class for the purpose of legislation. The fact that the Act is extended only to the several States mentioned in section 1 (2) does not make any difference, for a classification may well be made on a geographical basis. Indeed, the consent of the several States to the passing of this Act quite clearly indicates, in the opinion of the governments of those States who are the best judges of the welfare of their people, that the Muslim abducted persons to be found in those States form one class having similar interests to protect.' Therefore the inclusion of all of them' in the definition of abducted persons cannot be called discriminatory. Finally, there is nothing discriminatory in sections 6 and 7. Section 7 only implements the decision of the Tribunal arrived at under section 6. There are several alternative things that the Tribunal has been authorised to do. Each and everyone of the abducted persons is liable to be treated in one way or another as the Tribunal may determine. It is like all offenders under a particular section being liable to a fine or imprisonment. There is no discrimination if one is fined and the other is imprisoned, for all offenders alike are open to the risk of being treated in one way or another. In our view, the High Court quite correctly decided this question against the petitioner.

. . .

Although we hold that the High Court erred on the construction they put upon Article 22 and the appellant has succeeded on that point before us, this appeal will, nevertheless, have to be dismissed on the ground that the Tribunal was not properly constituted and its order was without jurisdiction, as conceded by the learned Solicitor-General. We, therefore, dismiss this appeal on that ground.

We make no order as to costs.

Appeal dismissed, Agent for the appellant: P.A. Mehta.

Appendix II

Sarbananda Sonowal v. *Union of India*

AIR 2005 S C 2920, AIR 2005 SCW 3393

Coram: 3 R.C. LAHOTI, CJI, G. P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.

Writ Petition (C) No.131 of 2000, D/- 12 -7 -2005.

Judgment

G.P. Mathur, J. :- This writ petition under Article 32 of the Constitution of India has been filed by way of public interest litigation for declaring certain provisions of the Illegal Migrants (Determination by Tribunals) Act, (Act No. 39 of 1983) 1983 as ultra vires the Constitution of India, null and void and consequent declaration that the Foreigners Act, 1946 and the Rules made thereunder shall apply to the State of Assam. The second prayer made is to declare the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution of India and also under Section 28 of the aforesaid Act and, therefore, null and void. Some more reliefs have been claimed which will be referred to at the appropriate stage. The respondents to the writ petition are the Union of India and the State of Assam.

2. The case set up in the writ petition is that the petitioner is a citizen of India and is ordinarily resident in the State of Assam. He is a former President of the All Assam Students Union, which is the largest non-political students, organization in the State which was responsible for leading the students movement in Assam in the late 1970s and early 1980s. He is also a former Chairman of the North East Students' Organisation, which is an umbrella organization of students' associations from Assam, Meghalaya, Manipur, Nagaland, Tripura and Arunachal Pradesh, and has been actively involved in issues concerning the rights of the people of Assam including the question of

illegal migrants settled in the said State. The issues raised in the writ petition concern all residents in the State of Assam whose rights as citizens of India have been materially and gravely prejudiced by the operation of the Illegal Migrants (Determination by Tribunals) Act, 1983 (hereinafter referred to as 'the IMDT Act'). The principal grievance of the petitioner is that the IMDT Act is wholly arbitrary, unreasonable and discriminates against a class of citizens of India, making it impossible for citizens who are residents in Assam to secure the detection and deportation of foreigners from Indian soil. The Foreigners Act, 1946, applies to all the foreigners throughout India, but the IMDT Act which was enacted subsequently with the professed aim of making detection and deportation of the illegal migrants residing in Assam easier has completely failed to meet even the standards prescribed in the Foreigners Act. That apart, even those provisions of the IMDT Act which afford some measure of protection to some genuine Indian citizens against illegal migrants are not being properly enforced due to extraneous political considerations in derogation of the rights of Indian citizens living in Assam. The result of the IMDT Act has been that a number of non-Indians, who surreptitiously entered into Assam after March 25, 1971 without possession of valid passports, travel documents or other lawful authority to do so, continue to reside in Assam. Their presence has changed the whole character, cultural and ethnic composition of the area and the IMDT Act creates a situation whereunder it has become virtually impossible to challenge the presence of a foreigner and to secure his detection, deportation or even deletion of his name from the electoral list as they get protection on account of the provisions of the Act. According to the census figures, which have been given in the writ petition, the rate of growth of the population in Assam is far more than the rest of India which shows that large number of foreigners have migrated to different areas of Assam and have settled there.

...

24. In view of Section 3(1)(c) of the IMDT Act, an illegal migrant is a person with respect to whom all the three conditions, *namely*, (i) has entered India on or after 25th March, 1971; (ii) is a foreigner which means he is not a citizen of India; and (iii) has entered India without being in possession of a valid passport or other travel documents or any other lawful authority in this behalf, are satisfied. Therefore, if a foreigner has entered India on or after 25th March, 1971, he would be dealt with under the IMDT Act, while as a foreigner who has entered any part of India including Assam before 25th March, 1971, would be dealt with under the Foreigners Act. Section 4 of the IMDT Act is an overriding provision which lays down that the IMDT Act or the Rule or order made therein shall have effect notwithstanding anything contained in the Foreigners Act, 1946 or the Immigrants (Expulsion from Assam) Act, 1950 or the Passport Act or any Rule or Order made thereunder. Section 8(1) confers power on the Central government to make a reference for its decision to the Tribunal whether any person is an illegal migrant or not. This reference can also

be made on a representation made by an illegal migrant against any order passed against him under the Foreigners Act not to remain in India. This provision gives special advantage to an illegal migrant in Assam, which is not available to any foreigner in rest of India. ...

25. It is very important to note here that IMDT Act does not contain any provision similar to Section 9 of the Foreigners Act, 1946 regarding burden of proof. On the contrary it is conspicuously silent about it. In such circumstances a very heavy burden is cast upon the authorities of the State or the applicant to establish that a person is an illegal migrant as defined in Section 3(1)(c) of the IMDT Act and is liable for deportation.

...

27. To give the exact date of entry into India of a Bangladeshi national, who has illegally and surreptitiously crossed the international border, is not only difficult but virtually impossible. A citizen doing his duty towards nation of pointing out the presence of a Bangladeshi national to the authorities of the State is put under threat of criminal prosecution, if the contents of the application are found to be false. ...

28. The analysis of the provisions of the IMDT Act and the Rules made thereunder clearly demonstrate that the provisions thereof are very stringent as compared to the provisions of the Foreigners Act, 1946 or the Foreigners (Tribunals) Order, 1964, in the matter of detection and deportation of illegal migrants. It is far easier to secure conviction of a person in a criminal trial where he may be awarded a capital punishment or imprisonment for life than to establish that a person is an illegal migrant on account of extremely difficult, cumbersome and time consuming procedure laid down in the IMDT Act and the Rules made thereunder. The Act does not contain any provision for constitution of a screening committee which has been done under the Rules and has been conferred a very wide power of rejecting complaints against which no appeal lies. The figures supplied in the initial affidavit filed by the State of Assam show that more than eighty five per cent enquiries initiated were rejected and no reference was made to the Tribunal.

...

29. The learned Additional Solicitor General and Shri K.K. Venugopal have laid great stress on the submission that the IMDT Act provides a very fair procedure for determining whether a person is an illegal migrant or not as the said question is decided by a Judicial Tribunal consisting of two members, who are or have been Additional District Judges or District Judges. Similarly, the Appellate Tribunal consists of two members, who are or have been Judge of a High Court. The argument overlooks the fact that the Screening Committee does not consist of any judicial member but is manned by the executive....

30. The State of Assam in its affidavit filed on 24-8-2000 has pointed out some practical problems in the implementation of the IMDT Act due to which the Act has not become effective and the results are extremely poor, which are as follows:

"i) The onus of proof as illegal migrants lies on the prosecution under IMDT Act which is opposed to the Foreigners Act, 1946 under which the onus is on the suspected foreigners.

ii) There is no provision in the IMDT Act for compelling the suspect to furnish particulars required in Form No. I of IMDT Rules and a corresponding penal provision to deal with such suspect in case of their refusal to furnish information as required in Rule 5.

iii) There is no provision for compelling suspect witness to furnish information or statement to Police Officers making enquiries and as such taking recourse to action under Section 176, IPC is difficult in case of refusal.

iv) The Enquiry Officer is not empowered to search home/premises of the suspects nor can he compel the suspects to produce documents to give necessary information.

v) Prosecution witnesses do not appear before the Tribunal for want of necessary allowances.

vi) Once the Tribunals declare a person as an illegal migrant, he/she becomes untraceable either before the notice is served or during the grace period of 30 days.

vii) Notice/summons issued by the Tribunals cannot easily be served due to frequent changes of address by the illegal migrants in unknown destinations.

viii) The expulsion orders cannot be served as the illegal migrants, with frequent change of address, merge with the people of similar ethnic origin.

ix) It is provided in the Act that for filing complaint against a suspected person to determine as to whether he is an illegal migrant, two persons living within the same Police Station are required to file the complaint with filing of affidavit and an amount of Rs 100.00 which was originally Rs 25.00 is to be deposited with the application. This provision of the Act puts a severe restriction in filing any complaint against an illegal migrant.

x) The Tribunals after observing a long drawn procedure declare a person as illegal migrant who is to be deported from India but such deportation becomes very difficult as the illegal migrants change their residence and shift to some other areas.

xi) There are instances of strong resistance to the Enquiry Officer conducting enquiries against the illegal migrants in Char areas (riverine areas) and other locations where there is heavy concentration of immigrant population."

...

32. The foremost duty of the Central government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure. The Government has also a duty to prevent any internal disturbance and maintain law and order. Kautilya in his masterly work 'The Arthashastra' has said that a King had two responsibilities to his state, one internal and one external, for which he needed an army. One of the main responsibilities was Raksha or protection of the state from external aggression. ... The very first entry, namely, Entry 1 of List I of the Seventh Schedule is 'Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization'. In fact entries 1 to 4 of List I of Seventh Schedule mainly deal with armed forces. Article 355 of the Constitution of India reads as under :-

'355. Duty of the Union to protect States against external aggression and internal disturbance. — It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.'

The word 'aggression' is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, 'an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes.'

The word 'aggression' is not to be confused only with 'war'. Though war would be included within the ambit and scope of the word 'aggression', but it comprises many other acts which cannot be termed as war. ... The framers of the Constitution have consciously used the word 'aggression' and not 'war' in Article 355.

...'aggression' is, therefore, an all comprehensive word having very wide meaning. Its meaning cannot be explained by a straight jacket formula but will depend on the fact situation of every case.

The definition of 'aggression' as adopted by UN General Assembly Resolution 3314 (XXIX) was, however, for a limited purpose... the acts enumerated therein which may amount to aggression cannot restrict or curtail the meaning or the sense in which the word 'aggression' has been used in Article 355 of the Constitution.

37. The very first sentence of the Statement of Objects and Reasons of the IMDT Act says 'the influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North-Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region.' It further says that 'continuance of these persons in India has given rise to serious problems.' The Preamble of the Act says that 'the continuance of such foreigners in India is detrimental to the interests of the public of India.' The Governor of Assam in his report dated 8th November, 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of

Assam but has more dangerous dimensions of greatly undermining our national security. Pakistan's ISI is very active in Bangladesh supporting militants in Assam. Muslim militant organizations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of Deputy Chief of the Army Staff and is very well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like 'Char land', barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people in Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources.

38. This being the situation there can be no manner of doubt that the State of Assam is facing 'external aggression and internal disturbance' on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose.

39. We have considered the provisions of the Foreigners Act, Foreigners (Tribunals) Order, 1964 and also the IMDT Act and the Rules made thereunder in considerable detail in the earlier part of the judgment. They clearly demonstrate that the procedure under the Foreigners Act and also under the Foreigners (Tribunals) Order, 1964 is far more effective in identification and deportation of foreigners as compared to the procedure under the IMDT Act and the Rules made thereunder. … As already discussed, the presence of such a large number of illegal migrants from Bangladesh, which runs into millions, is in fact an 'aggression' on the State of Assam …. The impact is such that it not only affects the State of Assam but it also affects its sister States like Arunachal Pradesh, Meghalaya, Nagaland, etc. as the route to the said places passes through the State of Assam.

40. The Parliament enacted the Immigrants (Expulsion from Assam) Act, 1950 and the Statement of Objects and Reasons thereof reads as follows:

'During the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the Province, besides giving rise to a serious law and order problem. The Bill seeks to confer necessary powers on the Central government to deal with the situation.'

The Preamble to the aforesaid Act says:

'An Act to provide for the expulsion of certain immigrants from Assam.'

Section 2 of this Act lays down that if the Central government is of the opinion that any person or class of persons, having been ordinarily resident in any place outside India, has or have, whether before or after the commencement of this Act, come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interest of the general public of India or of any section thereof or of any Scheduled Tribe in Assam, the Central government may by order direct such person or class of persons to remove himself or themselves from India or Assam and give such further direction in regard to his or their removal from India. Proviso of this Section says that it will not apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from his place of residence in such area and who has been subsequently residing in Assam. Section 3 confers power on Central government to delegate the powers and duties conferred upon it by Section 2 to any officers subordinate to the Central government. It may be noted that the reference to the word "East Bangal" in the Statement of Objects and Reasons of the aforesaid Act, which came into force on 1st March, 1950, meant East Pakistan, which is the present Bangladesh. Realising the serious law and order problem created by migration from East Pakistan and the serious situation arising therefrom the said Act was enacted and conferred very wide powers upon the Central government to direct removal of any person outside India. However, on account of Section 4 of the IMDT Act the Immigrants (Expulsion from Assam) Act, 1950 has been superseded and the provisions of the said Act have ceased to apply to the State of Assam. Thus by enacting the IMDT Act the Parliament has divested the Central government of the power to remove migrants from Bangladesh, whose presence was creating serious law and order problem, which fact had been realized by the Central government as early as in 1950. The IMDT Act instead of maintaining peace has only revived internal disturbance.

…

42. The above discussion leads to irresistible conclusion that the provisions of the IMDT Act and the Rules made thereunder clearly negate the constitutional mandate contained in Article 355 of the Constitution, where a duty has been cast upon the Union of India to protect every State against external aggression and internal disturbance. The IMDT Act, which contravenes Article 355 of the Constitution, is, therefore, wholly unconstitutional and must be struck down.

43. Shri Ashok Desai, learned senior counsel appearing for the writ petitioner, has submitted that the application of the IMDT Act to the State of Assam alone is wholly discriminatory and violates Article 14 of the Constitution as the classification made is not founded upon any intelligible differentia and there is no nexus between the basis of the classification and the object of the IMDT Act. Reliance has been placed on a Seven Judge Bench decision of this Court in *Budhan Choudhry* v. *State of Bihar*, AIR 1955 SC 191 and some other cases in support of this submission. Shri Amarendra Saran, learned Additional Solicitor General and also Shri K.K. Venugopal, learned senior counsel appearing for the State of Assam, have submitted that the classification made on the basis of historical facts and/or geographical criteria is a perfectly valid classification and the petitioner cannot complain of violation of Article 14 on the ground that the IMDT Act has been made applicable only to the State of Assam. It has been further urged that a classification made whereunder an Act is made applicable only to some of the Districts in a State or even to a part of a District on account of some geographical consideration would be perfectly valid and would not offend Article 14 of the Constitution in any manner. In support of this submission, learned counsel have placed reliance on several decisions namely, *D.P. Joshi* v. *State of Madhya Bharat*, AIR 1955 SC 334, *Kishan Singh* v. *State of Rajasthan*, AIR 1955 SC 795, *Gopi Chand* v. *Delhi Administration*, AIR 1959 SC 609, *Kangshari Haldar* v. *State of West Bengal*, AIR 1960 SC 457 and *Clarence Pais* v. *Union of India*, 2001 (4) SCC 325. ...

45. As mentioned earlier, the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region. Their presence has changed the demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts. In such circumstances, if the Parliament had enacted a legislation exclusively for the State of Assam which was more stringent than the Foreigners Act, which is applicable to rest of India, and also in the State of Assam for identification of such persons who migrated from the territory of present Bangladesh between 1st January, 1966 to 24th March, 1971, such a legislation would have passed the test of Article 14 as the differentiation so made would have had rational nexus with the avowed policy and objective of the Act. But the mere making of a geographical classification cannot be sustained where the Act instead of achieving the object of the legislation defeats the very purpose for which the legislation has been made. As discussed earlier, the provisions of the Foreigners Act are far more effective in identification and deportation of foreigners who have illegally crossed the international border and have entered India without any authority of law and have no authority to continue to remain in India. For satisfying the test of Article 14, the geographical factor alone in making a classification is not enough but there must be a nexus with the objects sought to be achieved. If geographical consideration becomes the sole criteria completely overlooking the other aspect of 'rational nexus with the policy and object of the Act' it would be open to the legislature to apply enactments made by it to any sub- division or district within the State and leaving others at its sweet will. This is not the underlying spirit or the legal principle on which Article 14 is founded. Since the classification made whereby IMDT Act is made applicable only to the State of Assam has no rational nexus with the policy and object of the Act, it is clearly violative of Article 14 of the Constitution and is liable to be struck down on this ground also.

46. Shri Ashok Desai, learned senior counsel for the petitioner has also urged that the reports of the Governor and also the earlier counter affidavits filed by Union of India and State of Assam show that the whole demographic pattern of the State of Assam has undergone a change and the local people of Assam have been reduced to a minority in their own State on account of large influx of illegal migrants from Bangladesh. According to learned counsel, this amounts to violation of the rights guaranteed under Article 29(1) of the Constitution as the people of Assam have a fundamental right to conserve their language, script or culture. Undoubtedly, Article 29(1) confers a fundamental right on all sections of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own to conserve the same and any invasion of this right would be ultra vires. The enforcement of the IMDT Act has no doubt facilitated to a very large extent the illegal migrants from Bangladesh to continue to reside in Assam, who on account of their huge number affect the language, script and culture of the local people. However, we do not wish to express any concluded opinion whether on the fact situation the IMDT Act can be thus said to be violating Article 29(1) of the Constitution as the necessary factual basis for determination of this question has not been laid in the pleadings.

...

48. We consider it necessary here to briefly notice the law regarding deportation of aliens as there appears to be some misconception about it and it has been argued with some vehemence that aliens also possess several rights and the procedure for their identification and deportation should be detailed and elaborate in order to ensure fairness to them.

49. In *Introduction to International Law* by J.G. Starke (1st Indian re-print, 1994) in Chapter 12 (page 348), the law on the points has been stated thus: -

'Most States claim in legal theory to exclude all aliens at will, affirming that such unqualified right is an essential attribute of sovereign Government. The Courts of Great Britain and the United States have laid it down that the right to exclude aliens at will is an incident of territorial sovereignty. Unless bound by an international treaty to the contrary, States are not subject to a duty under international law to admit aliens or any duty thereunder not to expel them. Nor does international law impose any duty as to the period of stay of an admitted alien.'

Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law does not prohibit the expulsion

enmasse of aliens (page 351). Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law, and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa, etc. and not to those who have entered illegally or unlawfully. Similar view has been expressed in *Oppenheim's International Law* (Ninth Edn. 1992 - in paragraphs 400, 401 and 413). The author has said that the reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy, competent to exclude aliens from the whole or any part of its territory. In paragraph 413 it is said that the right of States to expel aliens is generally recognized. It matters not whether the alien is only on a temporary visit, or has settled down for professional business or any other purposes on its territory, having established his domicile there. A belligerent may consider it convenient to expel all hostile nationals residing or temporarily staying within its territory; although such a measure may be very harsh on individual aliens, it is generally accepted that such expulsion is justifiable. Having regard to Article 13 of the International Covenant on Civil and Political Rights, 1966, an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law.

52. In *Louis De Raedt* v. *Union of India*, 1991 (3) SCC 554 the two foreign nationals engaged in missionary work had come to India in 1937 and 1948 respectively with proper documents like passport, visa, etc. and were continuously living here but by the order dated 8th July, 1987 their prayer for further extension of the period of stay was rejected and they were asked to leave the country by 31st July, 1987. They then challenged the order by filing a writ petition. This Court held that the power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive Government has unrestricted right to expel a foreigner. So far as right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case. AIR 1991 SC 1886 : 1991 AIR SCW 2113.

53. In *State of Arunachal Pradesh* v. *Khudi Ram Chakma*, 1994 (Supp) SCC 615, following Louis De Raedt (supra), it was held that the fundamental right of a foreigner is confined to Article 21 for life and liberty and does not include the right to reside and stay in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of the country. After referring to some well-known and authoritative books on International Law it was observed that the persons who reside in the territories of countries of which they are not nationals, possess a special status under International Law. States reserve the

right to expel them from their territory and to refuse to grant them certain rights which are enjoyed by their own nationals like right to vote, hold public office or to engage in political activities. Aliens may be debarred from joining the civil services or certain profession or from owning some properties and the State may place them under restrictions in the interest of national security or public order. Nevertheless, once lawfully admitted to a territory, they are entitled to certain immediate rights necessary to the enjoyment of ordinary private life. Thus, the Bangladeshi nationals who have illegally crossed the border and have trespassed into Assam or are living in other parts of the country have no legal right of any kind to remain in India and they are liable to be deported. AIR 1994 SC 1461 : 1994 AIR SCW 904.

...

55. Shri K.K. Venugopal has submitted that Section 8 of the IMDT Act is similar to Section 9 of the Citizenship Act and, therefore, the same interpretation should be placed upon Section 8. In our opinion it is not possible to accept such a contention. Section 9 of the Citizenship Act applies to a situation where the question is whether an Indian citizen has lost his citizenship by acquiring the citizenship of a foreign country. Such a question can be decided only by the Central government. We are concerned here with identification and deportation of such Bangladeshi nationals who have illegally crossed the international border and have taken up residence in Assam. The question of loss of Indian citizenship on account of acquisition of citizenship of another country does not at all arise for consideration here.

...

57. To sum up our conclusions, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 are ultra vires the Constitution of India and are accordingly struck down. The Illegal Migrants (Determination by Tribunals) Rules, 1984 are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function. The Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam. All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964. In view of the finding that the competent authority and the Screening Committee had no authority or jurisdiction to reject any proceedings initiated against any alleged illegal migrant, the orders of rejection passed by such authorities are declared to be void and non est in the eye of law. It will be open to the authorities of the Central government or state government to initiate fresh proceedings under the Foreigners Act against all such persons

whose cases were not referred to the Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever. The appeals pending before the Appellate Tribunals shall be deemed to have abated.

58. In view of the discussion made above, the writ petition succeeds and is allowed with the following directions:

(1) The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 are declared to be ultra vires the Constitution of India and are struck down;

(2) The Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function;

(3) All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.

(4) It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.

(5) All appeals pending before the Appellate Tribunal shall be deemed to have abated.

(6) The respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam.

Appendix III

Olga Tellis v. Bombay Municipal Corporation

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Coram : 5 Y. V. CHANDRACHUD, C.J.I., S. MURTAZA FAZL ALI, V. D. TULZAPURKAR, O. CHINNAPPA REDDY AND A. VARADARAJAN , JJ.
Writ Petns. Nos. 4610-4612 and 5068-5079 of 1981, D/- 10 -7 -1985.
AND
Vayyapuri Kuppusami and others, Petitioners v. State of Maharashtra and others, Respondents.

Judgment

CHANDRACHUD, C. J.:- These Writ Petitions portray the plight of lakhs of persons who live on pavements and in slums in the city of Bombay. They constitute nearly half the population of the city. The first group of petitions relates to pavement dwellers while the second group relates to both pavement and Basti or slum dwellers. Those who have made pavements their homes exist in the midst of filth and squalor, which has to be seen to be believed. Rabid dogs in search of stinking meat and cats in search of hungry rats keep them company. They cook and sleep where they ease, for no conveniences are available to them. Their daughters come of age, bathe under the nosy gaze of passers by, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other's hair. The boys beg. Menfolk, without occupation, snatch chains with the connivance of the defenders of law and order; when caught, if at all, they say: "Who doesn't commit crimes in this city?"

2. It is these men and women who have come to this Court to ask for a judgment that they cannot be evicted from their squalid shelters without being offered alternative accommodation. They rely for their rights on Article 21 of the Constitution which guarantees that no person shall be deprived of his life

except according to procedure established by law. They do not contend that they have a right to live on the payments. Their contention is that they have a right to live, a right which cannot be exercised without the means of livelihood. They have no option but to flock to big cities like Bombay, which provide the means of bare subsistence. They only choose a pavement or a slum which is nearest to their place of work. In a word, their plea is that the right to life is illusory without a right to the protection of the means by which alone life can be lived. And the right of life can only be taken away or abridged by a procedure established by law, which has to be fair and reasonable, not fanciful or arbitrary such as is prescribed by the Bombay Municipal Corporation Act or the Bombay Police Act. They also rely upon their right to reside and settle in any part of the country which is guaranteed by Article 19 (f)(e).

3. The three petitioners in the group of Writ Petitions 4610-4612 of 1981 are a journalist and two pavement dwellers. One of these two pavement dwellers, P. Angamuthu, migrated from Salem, Tamil Nadu, to Bombay in the year 1961 in search of employment. He was a landless labourer in his home town but he was rendered jobless because of drought. He found a job in a Chemical Company at Dahisar, Bombay, on a daily wage of Rs. 23 per day. A slum-lord extorted a sum of Rs. 2,500 from him in exchange for a shelter of plastic sheets and canvas on a pavement on the Western Express Highway, Bombay. He lives in it with his wife and three daughters who are 16, 13 and 5 years of age.

4. The second of the two pavement dwellers came to Bombay in 1969 from Sangamner, District Ahmednagar. Maharashtra. He was a cobbler earning 7 to 8 rupees a day, but his so-called house in the village fell down. He got employment in Bombay as a Badli Kamgar for Rs. 350 per month. He was lucky in being able to obtain a 'dwelling house' on a pavement at Tulsiwadi by paying Rs. 300 to a goonda of the locality. The bamboos and the plastic sheets cost him Rs. 700.

5. On July 13, 1981, the then Chief Minister of Maharashtra, Shri A. R. Antulay, made an announcement which was given wide publicity by the newspapers that all pavement dwellers in the city of Bombay will be evicted forcibly and deported to their respective places of origin or removed to places outside the city of Bombay. The Chief Minister directed the Commissioner of Police to provide the necessary assistance to respondent 1, the Bombay Municipal Corporation, to demolish the pavement dwellings and deport the pavement dwellers. The apparent justification which the Chief Minister gave to his announcement was: 'It is a very inhuman existence. These structures are flimsy and open to the elements. During the monsoon there is no way these people can live comfortably.'

6. On July 23,1981, the pavement dwelling of P. Angamuthu was demolished by the officers of the Bombay Municipal Corporation. He and the members of his family were put in a bus for Salem. His wife and daughters stayed back in Salem but he returned to Bombay in search of a job and got into a pavement house once again. The dwelling of the other petitioner was demolished even earlier in January, 1980 but he rebuilt it. It is like a game of hide and seek. The Corporation removes the ramshackle shelters on the pavements with the aid of police, the pavement dwellers flee to less conspicuous pavements in by-lanes and, when the officials are gone, they return to their old habitats. Their main attachment to those places is the nearness thereof to their place of work.

7. In the other batch of Writ Petitions Nos. 5068–79 of 1981, which was heard along with the petitions relating to pavement dwellers, there are 12 petitioners. The first five of those are residents of Kamraj Nagar, a basti or habitation which is alleged to have come into existence in about 1960–61, near the Western Express Highway, Bombay. The next four petitioners were residing in structures constructed off the Tulsi Pipe Road, Mahim, Bombay. Petitioner No. 10 is the Peoples' Union for Civil Liberties, petitioner No. 11 is the Committee for the Protection of Democratic Rights while petitioner No. 12 is a journalist.

8. The case of the petitioners in the Kamraj Nagar group of cases is that there are over 500 hutments in this particular basti which was built in about 1960 by persons who were employed by a Construction company engaged in laying water pipes along the Western Express Highway. The residents of Kamraj Nagar are municipal employees, factory or hotel workers, construction supervisors and so on. The residents of the Tulsi Pipe Road hutments claim that they have been living there for 10 to 15 years and that they are engaged in various small trades. On hearing about the Chief Minister's announcement, they filed a writ petition in the High Court of Bombay for an order of injunction restraining the officers of the state government and the Bombay Municipal Corporation from implementing the directive of the Chief Minister. The High Court granted an ad interim injunction to be in force until July 21, 1981. On that date, respondents agreed that the huts will not be demolished until October 15, 1981. However, it is alleged that on July 23, 1981 the petitioners were huddled into State Transport buses for being deported out of Bombay. Two infants were born during the deportation but that was set off by the death of two others.

9. The decision of the respondents to demolish the huts is challenged by the petitioners on the ground that it is violative of Articles 19 and 21 of the Constitution. The petitioners also ask for a declaration that the provisions of Ss. 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888 are invalid as violating Arts. 14, 19 and 21 of the Constitution. The reliefs asked for in the two groups of writ petitions are that the respondents should be directed to withdraw the decision to demolish the pavement dwellings and the slum hutments and, where they are already demolished, to restore possession of the sites to the former occupants.

10. On behalf of the Government of Maharasthra, a counter-affidavit has been filed by V.S. Munje, Under Secretary in the Department of Housing. The counter-affidavit meets the case of the petitioners thus. The Government of Maharashtra neither proposed to deport any pavement dweller out of the city of

Bombay nor did it, in fact, deport anyone. Such of the pavement dwellers, who expressed their desire in writing, that they wanted to return to their home towns and who sought assistance from the Government in that behalf were offered transport facilities up to the nearest rail head and were also paid railway fare or bus fare and incidental expenses for the onward journey. The Government of Maharashtra had issued instructions to its officers to visit specific pavements on July 23, 1981 and to ensure that no harassment was caused to any pavement dweller. Out of 10,000 hutment-dwellers who were likely to be affected by the proposed demolition of hutments constructed on the pavements, only 1,024 persons opted to avail of the transport facility and the payment of incidental expenses.

11. The counter-affidavit says that no person has any legal right to encroach upon or to construct any structure on a foot-path, public street or on any place over which the public has a right of way. Numerous hazards of health and safety arise if action is not taken to remove such encroachments. Since, no civic amenities can be provided on the pavements, the pavement dwellers use pavements or adjoining streets for easing themselves. Apart from this, some of the pavement dwellers indulge in anti-social acts like chain-snatching, illicit distillation of liquor and prostitution. The lack of proper environment leads to increased criminal tendencies, resulting in more crime in the cities. It is, therefore, in public interest that public places like pavements and paths are not encroached upon. The Government of Maharashtra provides housing assistance to the weaker sections of the society like landless labourers and persons belonging to low income groups, within the framework of its planned policy of the economic and social development of the State. Any allocation for housing has to be made after balancing the conflicting demands from various priority sectors. The paucity of resources is a restraining factor on the ability of the State to deal effectively with the question of providing housing to the weaker sections of the society. The Government of Maharashtra has issued policy directives that 75 per cent of the housing programme should be allocated to the lower income groups and the weaker sections of the society. One of the objects of the State's planning policy is to ensure that the influx of population from the rural to the urban areas is reduced in the interest of a proper and balanced social and economic development of the State and of the country. This is proposed to be achieved by reversing the rate of growth of metropolitan cities and by increasing the rate of growth of small and medium towns. The state government has therefore devised an Employment Guarantee Scheme to enable the rural population, which remains unemployed or under employed at certain periods of the year, to get employment during such periods. A sum of about Rs 180 crores was spent on that scheme during the years 1979–80 and 1980–81. On 2 October 1980 the state government launched two additional schemes for providing employment opportunities for those who cannot get work due to old age or physical infirmities. The state government has also launched a scheme for providing self-employment opportunities under the 'Sanjay Gandhi Niradhar Anudan Yojana'. A monthly pension of Rs 60 is paid to those who are too old to work or are physically handicapped. In this scheme, about 1,56,943 persons have been identified and a sum of Rs 2.25 crores was disbursed. Under another scheme called 'Sanjay Gandhi Swawalamban Yojana', interest-free loans, subject to a maximum of Rs 2,500, were being given to persons desiring to engage themselves in gainful employment of their own. About 1,75,000 persons had benefited under this scheme, to whom a total sum of Rs 5.82 crores was disbursed by way of loan. In short, the objective of the state government was to place greater emphasis on providing infrastructural facilities to small and medium towns and to equip them so that they could act as growth and service centres for the rural hinterland. The phenomenon of poverty which is common to all developing countries has to be tackled on an all-India basis by making the gains of development available to all sections of the society through a policy of equitable distribution of income and wealth. Urbanisation is a major problem facing the entire country, the migration of people from the rural to the urban areas being a reflection of the colossal poverty existing in the rural areas. The rural poverty cannot, however, be eliminated by increasing the pressure of population on metropolitan cities like Bombay. The problem of poverty has to be tackled by changing the structure of the society, in which there will be a more equitable distribution of income and greater generation of wealth. The state government has stepped up the rate of construction of tenements for the weaker sections of the society from Rs 2,500 to 9,500 per annum.

...

15. The Municipal Commissioner has stated in his counter-affidavit in Writ Petitions 5068–79 of 1981 that the huts near the Western Express Highway, Vile Parle, Bombay, were constructed on an accessory road which is a part of the Highway itself. These hutments were never regularised by the Corporation and no registration numbers were assigned to them.

16. In answer to the Municipal Commissioner's counter-affidavit, petitioner No. 12, Prafullachandra Bidwai, who is a journalist, has filed a rejoinder asserting that Kamraj Nagar is not located on a foot-path or a pavement. According to him, Kamraj Nagar is a basti off the Highway, in which the huts are numbered; the record in relation to which is maintained by the Road Development Department and the Bombay Municipal Corporation. Contending that petitioners 1 to 5 have been residing in the said basti for over 20 years, he reiterates that the public has no right of way in or over the Kamraj Nagar. He also disputes that the huts on the foot-paths cause any obstruction to the pedestrians or to the vehicular traffic or that those huts are a source of nuisance or danger to public health and safety. His case in paragraph 21 of his reply-affidavit seems to be that since the foot-paths are in

the occupation of pavement dwellers for a long time, foot-paths have ceased to be foot-paths.

...

18. The only other pleading which deserves to be noticed is the affidavit of the journalist petitioner, Ms Olga Tellis, in reply to the counter-affidavit of the Government of Maharashtra. According to her, one of the important reasons of the emergence and growth of squatter-settlements in the Metropolitan cities in India is that the Development and Master Plans of most of the cities have not been adhered to. The density of population in the Bombay Metropolitan Region is not high according to the Town Planning Standards. Difficulties are caused by the fact that the population is not evenly distributed over the region, in a planned manner. New constructions of commercial premises, small-scale industries and entertainment houses in the heart of the city have been permitted by the Government of Maharashtra contrary to law and even residential premises have been allowed to be converted into commercial premises. This, coupled with the fact that the state government has not shifted its main offices to the northern region of the city, has led to the concentration of the population in the southern region due to the availability of job opportunities in that region. Unless economic and leisure activity is decentralised, it would be impossible to find a solution to the problems arising out of the growth of squatter colonies. Even if squatters are evicted, they come back to the city because it is there that job opportunities are available. The alternate pitches provided to the displaced pavement-dwellers on the basis of the so-called 1976 census are not an effective means to their resettlement because those sites are situated far away from the Malad Railway Station involving cost and time which are beyond their means. There are no facilities available at Malavani like schools and hospitals, which drives them back to the stranglehold of the city. The permission granted to the 'National Centre of Performing Arts' to construct an auditorium at the Nariman Point, Backbay Reclamation is cited as a 'gross' instance of the short-sighted, suicidal and discriminatory policy of the Government of Maharashtra. It is as if the sea is reclaimed for the construction of business and entertainment houses in the centre of the city, which creates job opportunities to which the homeless flock. They work 'therein and live on pavements. The grievance is that, as a result of this imbalance, there are not enough jobs available in the northern' tip of the city. The improvement of living conditions in the slums and the regional distribution of job opportunities are the only viable remedies for relieving congestion of the population in the centre of the city. The increase allowed by the state government in the Floor Space Index over and above 1.33 has led to a further concentration of population in the centre of the city.

...

20. The arguments advanced before us by Ms Indira Jaising, Mr V.M. Tarkunde and Mr Ram Jethmalani cover a wide range but the main thrust of the petitioners' case is that evicting a pavement dweller or slum dweller

from his habitat amounts to depriving him of his right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution that no person shall be deprived of his life except according to procedure established by law.

...

27. We will first deal with the preliminary objection raised by Mr K.K. Singhvi, who appears on behalf of the Bombay Municipal Corporation, that the petitioners are estopped from contending that their huts cannot be demolished by reason of the fundamental rights claimed by them. ...

28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. ...

...

32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Art. 21 includes the right to livelihood and since they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him

of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey (1954) 347 M.D. 442 that the right to work is the most precious liberty that man possesses. It is the most precious liberty because it sustains and enables a man to live and the right to life is a precious freedom. 'Life', as observed by Field, J. in *Munn* v. *Illinois* (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh* v. *State of U.P.*, (1964) 1 SCR 332: (AIR 1963 SC 1295).

33. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The Principles contained in Arts. 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

34. Learned counsel for the respondents placed strong reliance on a decision of this Court in *In Re: Sant Ram* (1960) 3 SCR 499: (AIR 1960 SC 932) in support of their contention that the right to life, guaranteed by Art. 21 does not include the right to livelihood. Rule 24 of the Supreme Court Rules empowers the Registrar to publish lists of persons who are proved to be habitually acting as touts. The Registrar issued a notice to the appellant and one other person to show cause why their names should not be included in the list of touts. That notice was challenged by the appellant on the ground, inter alia, that it contravenes Article 21 of the Constitution since, by the inclusion of his name in the list of touts, he was deprived of his right to livelihood, which is included in the right to life. It was held by a Constitution Bench of this Court that the language of Article 21 cannot be pressed in aid of the argument that the word 'life' in Article 21 includes 'livelihood' also. This decision is distinguishable because, under the Constitution, no person can claim the right to livelihood by the pursuit of an opprobrious occupation or a nefarious trade or business, like toutism, gambling or living on the gains of prostitution. The petitioners before us do not claim the right to dwell on pavements or in slums for the purpose of pursuing any activity which is illegal, immoral or contrary to public interest. Many of them pursue occupations which are humble but honourable.

. . .

36. It is clear from the various expert studies to which we have referred while setting out the substance of the pleadings that one of the main reasons of the emergence and growth of squatter-settlements in big Metropolitan cities like Bombay is the availability of job opportunities which are lacking in the rural sector. The undisputed fact that even after eviction, the squatters return to the cities affords proof of that position. The Planning Commission's publication, 'The Report of the Expert Group of Programmes for the Alleviation of Poverty' (1982) shows that half of the population in India lives below the poverty line, a large part of which lives in villages. A publication of the Government of Maharashtra, 'Budget and the New 20 Point Socio-Economic Programme' shows that about 45 lakhs of families in rural areas live below the poverty line and that the average agricultural holding of a farmer, which is 0.4 hectares, is hardly enough to sustain him and his comparatively large family. The landless labourers, who constitute the bulk of the village population, are deeply imbedded in the mire of poverty. It is due to these economic pressures that the rural population is forced to migrate to urban areas in search of employment. The affluent and the not-so-affluent are alike in search of domestic servants. Industrial and business houses pay a fair wage to the skilled workman that a villager becomes in course of time. Having found a job, even if it means washing pots and pans, the migrant sticks to the big city. If driven out, he returns in quest of another job. The cost of public sector housing is beyond his modest means and the less we refer to the deals of private builders the better for all, excluding none. Added to these factors is the stark reality of growing insecurity in villages on account of the tyranny of parochialism and casteism. The announcement made by the Maharashtra Chief Minister regarding the deportation of willing pavement dwellers affords some indication that they are migrants from the interior areas, within and outside Maharashtra. It is estimated that about 200 to 300 people enter Bombay every day in search of employment. These facts constitute empirical evidence to justify the conclusion that persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is no-where else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time

otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore, in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life.

37. Two conclusions emerge from this discussion: one, that the right to life which is conferred by Article 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Article 21, such deprivation has to be according to procedure established by law. In the instant case, the law which allows the deprivation of the right conferred by Article 21 is the Bombay Municipal Corporation Act, 1888, the relevant provisions of which are contained in Secs. 312(1), 313(1)(a) and 314.

...

40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that 'The Influence of Remedies on Rights' (Current Legal Problems 1953, Volume 6.), 'from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work'. Therefore, 'He that takes the procedural sword shall perish with the sword' Per Frankfurter J. in *Vitarelli* v. *Seaton*, (1959) 3 Law ED 2d 1012."

...

43. In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements.

...

44. The challenge of the petitioners to the validity of the relevant provisions of the Bombay Municipal Corporation Act is directed principally at the procedure prescribed by Sec. 314 of that Act, which provides by clause (a) that the Commissioner may, without notice, take steps for the removal of encroachments in or upon any street, channel, drain, etc. By reason of Sec. 3(w), 'street' includes a causeway, footway or passage. In order to decide whether the procedure prescribed by Sec. 314 is fair and reasonable, we must first determine the true meaning of that section because, the meaning of the law determines its legality. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down. Considered in its proper perspective, Sec. 314 is in the nature of an enabling provision and not of a compulsive character.

...

47. The proposition that notice need not be given of a proposed action because there can possibly be no answer to it, is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice.

...

49. The jurisprudence requiring hearing to be given to those who have encroached on pavements and other public properties evoked a sharp response from the respondents' counsel. 'Hearing to be given to trespassers who have encroached on public properties; to persons who commit crimes', they seemed to ask in wonderment. There is no doubt that the petitioners are using pavements and other public properties for an unauthorised purpose. But, their intention or object in doing so is not to 'Commit an offence or intimidate, insult or annoy any person' which is the gist of the offence of 'Criminal trespass' under section 441 of the Penal Code. They manage to find a habitat in places which are mostly filthy or marshy, out of sheer helplessness. It is not as if they have a free choice to exercise as to whether to commit an encroachment and if so where. ...

50. The charge made by the state government in its affidavit that slum and pavement dwellers exhibit special criminal tendencies is unfounded. According to Dr P.K. Muttagi, Head of the unit for urban studies of the Tata Institute of Social Sciences, Bombay, the surveys carried out in 1972, 1977, 1979 and 1981 show that many families which have chosen the Bombay footpaths just for survival, have been living there for several years and that 53 per cent of the pavement dwellers are self-employed as hawkers in vegetables, flowers,

ice-cream, toys, balloons, buttons, needles and so on. Over 38 per cent are in the wage-employed category as casual labourers, construction workers, domestic servants and luggage carriers. Only 1. 7 per cent of the total number is generally unemployed. Dr Muttagi found among the pavement dwellers a graduate of Marathwada University and a Muslim poet of some standing. 'These people have merged with the landscape, become part of it, like the chameleon', though their contact with their more fortunate neighbours who live in adjoining high-rise buildings is casual. The most important finding of Dr Muttagi is that the pavement dwellers are a peaceful lot, 'for, they stand to lose their shelter on the pavement if they disturb the affluent or indulge in fights with their fellow dwellers. The charge of the state government, besides being contrary to these scientific findings, is born of prejudice against the poor and the destitute. Affluent people living in sky-scrapers also commit crimes varying from living on the gains of prostitution and defrauding the public treasury to smuggling. But, they get away. The pavement dwellers, when caught, defend themselves by asking, "who does not commit crimes in this city?", As observed by Anand Chakravarti, the separation between existential realities and the rhetoric of socialism indulged in by the wielders of power in the government cannot be more profound. ['Some Aspects of Inequality in Rural India : A Sociological Perspective' published in *Equality and Inequality, Theory and Practice*, edited by André Béteille, 1983].

51. Normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpaths should not be removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads. ...

52. Insofar as the Kamraj Nagar Basti is concerned, there are over 400 hutments therein. The affidavit of the Municipal Commissioner, Shri D.M. Sukhthankar, shows that the Basti was constructed on an accessory road leading to the highway. It is also clear from that affidavit that the hutments were never regularised and no registration numbers were assigned to them by the Road Development Department. Since the Basti is situated on a part of the road leading to the Express Highway, serious traffic hazards arise on account of the straying of the Basti children on to the Express Highway, on which there is heavy vehicular traffic. The same criterion would apply to the Kamraj Nagar Basti as would apply to the dwellings constructed unauthorisedly on other roads and pavements in the city.

53. The affidavit of Shri Arvind V. Gokak, Administrator of the Maharashtra Housing and Areas Development Authority, Bombay, shows that the state government had taken a decision to compile a list of slums which were required to be removed in public interest and to allocate, after a spot inspection, 500 acres of vacant land in or near the Bombay Suburban District for resettlement of hutment dwellers removed from the slums. A census was accordingly carried out on January 4, 1976 to enumerate the slum dwellers spread over about 850 colonies all over Bombay. About 67 per cent of the hutment dwellers produced photographs of the heads of their families, on the basis of which the hutments were numbered and their occupants were given identity cards. Shri Gokak further says in his affidavit that the Government had also decided that the slums which were in existence for a long time and which were improved and developed, would not normally be demolished unless the land was required for a public purpose. In the event that the land was so required, the policy of the state government was to provide alternate accommodation to the slum dwellers who were censused and possessed identity cards. The Circular of the state government dated February 4, 1976 (No. SIS/176/D-41) bears out this position. In the enumeration of the hutment dwellers, some persons occupying pavements also happened to be given census cards. The Government decided to allot pitches to such persons at a place near Malavani. These assurances held forth by the Government must be made good. In other words, despite the finding recorded by us that the provision contained in Section 314 of the BMC Act is valid, pavement dwellers to whom census cards were given in 1976 must be given alternate pitches at Malavani though not as a condition precedent to the removal of encroachments committed by them. Secondly, slum dwellers who were censused and were given identity cards must be provided with alternate accommodation before they are evicted. There is a controversy between the petitioners and the state government as to the extent of vacant land which is available for resettlement of the inhabitants of pavements and slums. Whatever that may be, the highest priority must be accorded by the state government to the resettlement of these unfortunate persons by allotting to them such land as the government finds to be conveniently available. The Maharashtra Employment Guarantee Act, 1977, the Employment Guarantee Scheme, the New Twenty Point Socio-Economic Programme, 1982, the Affordable Low Income Shelter Programme in Bombay Metropolitan Region and the Programme of House Building for the Economically Weaker Sections must not remain a dead letter as such schemes and programmes often do. Not only that, but more and more such programmes must be initiated if the theory of equal protection of laws has to take its rightful place in the struggle for equality. In these matters, the demand is not so much for less governmental interference as for positive governmental action to provide equal treatment to neglected segments of society. The profound rhetoric of socialism must be translated into practice for the problems which confront the State are problems of human destiny.

54. During the course of arguments, an affidavit was filed by Shri S.K. Jahagirdar, Under Secretary in the Department of Housing, Government of Maharashtra, setting out the various housing schemes which are under the

consideration of the state government. The affidavit contains useful information on various aspects relating to slum and pavement dwellers. The census of 1976, which is referred to in that affidavit shows that 28.18 lakhs of people were living in 6,27,404 households spread over 1,680 slum pockets. The earning of 80 per cent of the slum households did not exceed Rs. 600 per month. The state government has a proposal to undertake 'Low Income Scheme Shelter Programme' with the aid of the World Bank. Under that Scheme, 85,000 small plots for construction of houses would become available, out of which 40,000 would be in Greater Bombay, 25,000 in the Thane-Kalyan area and 20,000 in the New Bombay region. The state government is also proposing to undertake 'Slum Upgradation Programme (SUP)' under which basic civic amenities would be made available to the slum dwellers. We trust that these Schemes, grandiose as they appear, will be pursued faithfully and the aid obtained from the World Bank utilised systematically and effectively for achieving its purpose.

55. There is no short term or marginal solution to the question of squatter colonies, nor are such colonies unique to the cities of India. Every country, during its historical evolution, has faced the problem of squatter settlements and most countries of the underdeveloped world face this problem today. Even the highly developed affluent societies face the same problem, though with their larger resources and smaller populations, their task is far less difficult. The forcible eviction of squatters, even if they are resettled in other sites, totally disrupts the economic life of the household.

...

57. To summarize, we hold that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground that the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case; and that, the Kamraj Nagar Basti is situated on an accessory road leading to the Western Express Highway. We have referred to the assurances given by the state government in its pleadings here which, we repeat, must be made good. Stated briefly, pavement dwellers who were censused or who happened to be censused in 1970 should be given, though not as a condition precedent to their removal, alternate pitches at Malavani or, at such other convenient place as the government considers reasonable but not farther away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their re-settlement; slums which have been in existence for a long time, say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land is required for a public purpose, in which case, alternate sites or accommodation will be provided to them; the 'Low Income Scheme Shelter Programme' which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and the 'Slum Upgradation

Programme (SUP)' under which basic amenities are to be given to slum dwellers will be implemented without delay. In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter, only in accordance with this judgment. If any slum is required to be removed before that date parties may apply to this Court. Pavement dwellers, whether censused or uncensused, will not be removed until the same date, viz. October 31, 1985.

58. The Writ Petitions will stand disposed of accordingly. There will be no order as to costs.

Order accordingly.

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